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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its ninth session*, **

Chair-Rapporteur: Taonga **Mushayavanhu** (Zimbabwe)

Summary

The present report is submitted pursuant to Human Rights Council decision 3/103 and Council resolutions 6/21 and 10/30. The report is a summary of the proceedings of the ninth session of the Ad Hoc Committee on the Elaboration of Complementary Standards and the substantive discussions that took place during the session.

* The annexes to the present report are circulated as received, in the language of submission only.
** The present report was submitted late to reflect the most recent developments.

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I. Introduction

1. The Ad Hoc Committee on the Elaboration of Complementary Standards submits the present report pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30.

II. Organization of the session

2. The Ad Hoc Committee held its ninth session from 24 April to 5 May 2017. During the session, the Ad Hoc Committee held 18 meetings.

A. Attendance

3. The session was attended by representatives of Member States, non-Member States represented by observers, intergovernmental organizations and non-governmental organizations (NGOs) in consultative status with the Economic and Social Council (see annex III).

B. Opening of the session

4. The ninth session of the Ad Hoc Committee on the Elaboration of Complementary Standards was opened by the secretary of the Ad Hoc Committee.

C. Election of the Chair-Rapporteur

5. At its 1st meeting, the Ad Hoc Committee elected Taonga Mushayavanhu, Permanent Representative of Zimbabwe to the United Nations Office at Geneva, as its Chair-Rapporteur, by acclamation.

6. The Chair-Rapporteur thanked the members of the Ad Hoc Committee for his election and expressed his desire to work closely with all Member States, regional groups and other stakeholders during the session.

7. He said that the task of the Ad Hoc Committee was to look into ways of enhancing the protection of all persons from the scourges of racism, racial discrimination, xenophobia and related intolerance, which were all too common across the globe and which took many contemporary forms. The programme of work of the session contained a number of new, practically oriented topics, including comprehensive anti-discrimination legislation, protection of migrants against racist, discriminatory and xenophobic practices and protection of refugees, returnees and internally displaced persons against racism and discriminatory practices. In the light of the ever-worsening plight of those vulnerable groups, the Ad Hoc Committee must urgently come up with concrete recommendations on how the international community could ensure greater dignity, equality and fairness for all.

8. He said that in his view, during the session, the Ad Hoc Committee would hold updated discussions on xenophobia, procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination, national mechanisms and racism in sport, focusing in particular on identifying elements that would lead to the adoption of international standards. The Chair-Rapporteur stated that, as called for at the eighth session, he would, at the 6th meeting, distribute the "Chairperson's text to advance the work of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination" (hereinafter "the Chairperson's text"), which contained potential starting points for negotiations arising from discussions that had taken place during the previous eight sessions. The Ad Hoc Committee would also hold discussions on General Assembly resolution 71/181, adopted in December 2016, in paragraph 5 of which the General Assembly expressed its concern at the lack of progress in the elaboration of complementary

standards to the Convention to fill existing gaps through the development of new normative standards aimed at combating all forms of contemporary and resurgent scourges of racism, and in that regard called upon the Chair-Rapporteur of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the Convention on the Elimination of All Forms of Racial Discrimination to ensure the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature.

9. He added that, for its part, the Human Rights Council, in its resolution 34/36, had decided to implement the request of the General Assembly contained in its resolution 71/181 by requesting the Chair-Rapporteur of the Ad Hoc Committee to ensure the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature during the tenth session of the Ad Hoc Committee.

10. The Chair-Rapporteur said that the aim of the Ad Hoc Committee's discussions would be to enable it to prepare in advance of the tenth session, particularly by coming up with agreed modalities to initiate the negotiations. He urged the Ad Hoc Committee to begin forming thoughts around both the modalities and the elements that could constitute a starting point for negotiations during the tenth session.

D. Adoption of the agenda

11. Also at the 1st meeting, the Ad Hoc Committee adopted the following agenda for its ninth session:

1. Opening of the session.

2. Election of the Chair-Rapporteur.

3. Adoption of the agenda and programme of work.

4. Presentations and discussion on comprehensive anti-discrimination legislation.

5. Presentations and discussion on protection of migrants against racist, discriminatory and xenophobic practices.

6. Presentations and discussion on protection of refugees, returnees and internally displaced persons against racism and discriminatory practices.

7. General discussion and exchange of views on item 4.

8. General discussion and exchange of views on items 5 and 6.

9. Update discussion on xenophobia.

10. Update discussion on national mechanisms and procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination.

11. Update discussion on racism and sport.

12. General discussion and exchange of views on items 9 and 10.

13. General discussion and exchange of views on item 11.

14. Discussion on General Assembly resolution 71/181.

15. General discussion and exchange of views on conclusions and recommendations.

16. Adoption of the report.

E. Organization of work

12. At the same meeting, the Chair-Rapporteur introduced a draft programme of work for the session, which was adopted. The programme of work, as subsequently revised, is contained in annex II. The Chair-Rapporteur invited general comments from participants.

13. Delegations warmly congratulated the Chair-Rapporteur on his election.

14. The representative of Tunisia, speaking on behalf of the African Group, congratulated the Chair-Rapporteur on his election and welcomed his opening statement.

15. The African Group was convinced that the dialogue maintained by the Ad Hoc Committee since its inception provided ample opportunity to reflect on substantive and procedural gaps with regard to the Convention. The various thematic issues that the African Group and the Ad Hoc Committee had identified over the years as being contemporary manifestations of racism included xenophobia, Islamophobia, anti-Semitism, propagation of racism and xenophobic attacks through cyberspace, racial profiling and incitement to racial, ethnic and religious hatred. She said that victims of profiling required better protection from these manifestations. Maximum remedies should be applied and impunity for perpetrators of acts of racism should be eliminated.

16. The African Group fully supported the idea of seizing the opportunity presented by General Assembly resolution 71/181 and Human Rights Council resolution 34/36, by, as a first step and as a matter of urgency, negotiating an additional protocol on combating incitement to hatred through media platforms, such as the Internet. The African Group maintained that deferral of the implementation of that new vision to the tenth session of the Ad Hoc Committee would provide ample opportunity to prepare accordingly. In the view of the African Group, the ninth session should allow for a successful transition to further discussions by considering issues related to the scope of the Convention.

17. The victims of the above-mentioned crimes required that the Ad Hoc Committee discuss the scope of the Convention, rather than the issue of whether complementary standards were necessary. For that reason, the African Group welcomed the adoption of the programme of work for the ninth session because it would provide the Ad Hoc Committee with further opportunities to reflect on elements for future complementary standards.

18. The African Group was convinced that the Ad Hoc Committee would use the opportunity to fully implement the recommendation of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance — contained in paragraph 199 of the Durban Programme of Action — to prepare complementary international standards. The Ad Hoc Committee could not afford to avoid its responsibility when it came to the protection of victims of racism, racial discrimination, xenophobia and related intolerance. To do so would be tantamount to failing to treat the plight of victims of those scourges with the seriousness it deserved. The African Group hoped that the Ad Hoc Committee would use its ninth session to do its utmost to fulfil its mandate and looked forward to a constructive exchange of opinions and meaningful discussions on what was a very important matter.

19. The representative of the European Union stated that the European Union welcomed the inclusion of a discussion on comprehensive anti-discrimination legislation in the programme of work of the session. The adoption of comprehensive anti-discrimination legislation was crucial to the fight against all forms of discrimination. The European Union strongly supported the adoption of a holistic and integrated approach, capable of providing effective protection, while taking into account cases of multiple and intersecting forms of discrimination.

20. The promotion of equality and non-discrimination had been a core element of the European Union's goals, legislation and institutions from its early days.

21. The adoption in 2000, by the European Union, of two fundamental directives in the fight against discrimination constituted a major and unprecedented achievement. The race equality directive and the employment equality directive prohibited discrimination on grounds of racial or ethnic origin, religion, belief, disability, age and sexual orientation, and

provided protection in key areas of life such as employment, education, social security, health care and access to and supply of goods and services. Both instruments provided for the obligation to ensure the availability of judicial remedies to victims and also provided grounds for taking positive action to promote equality. In 2008, the adoption, by the Council of the European Union, of the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law had set common European Union standards, ensuring that racist and xenophobic offences were sanctioned in all Member States by a minimum level of effective, proportionate and dissuasive criminal penalties. Those instruments, together with the victims' rights directive, the audiovisual media services directive and other relevant legislation, constituted a comprehensive and advanced European Union anti-discrimination legal framework.

22. The institutions of the European Union were very much focused on the fight against discrimination, racism and xenophobia. The European Commission, which was primarily tasked with ensuring the correct legal transposition, implementation and enforcement of existing legislative instruments, also encouraged the exchange of good practices between European Union Member States. To that end, the Commission had established expert groups on non-discrimination and on racism and xenophobia in 2008 and 2009 respectively. In addition, the Agency for Fundamental Rights of the European Union, established in 2007, played a crucial role in collecting, analysing and disseminating objective and comparable data on racism, xenophobia, anti-Semitism, Islamophobia and other forms of intolerance and in providing independent and evidence-based policy guidance on equality and non-discrimination to the institutions and Member States of the European Union. Among other activities, the Agency assisted the Member States in designing and implementing relevant measures to combat hate crime within the framework of the Working Party on Hate Crime, which had been set up in 2014.

23. The European Union was of the view that the development of comprehensive anti-discrimination legislation was relevant and it stated that it would continue to engage in the promotion of equality and non-discrimination.

24. The representative of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC), stated that the work of the Ad Hoc Committee was currently more relevant than it had been at the time of the body's inception. The world was facing a myriad of challenges, including economic meltdown, rising xenophobia and intolerance, international conflicts and worsening human rights and humanitarian crises. The socioeconomic and political root causes of racial abuse had become significantly more complex, giving rise to new and contemporary forms of racial discrimination on the basis of race, sex, language or religion, which were not covered by existing instruments. Consequently, there was a need for effective legislation at both the national and international levels, to fill in the gaps and provide remedial measures for victims of injustice and discrimination.

25. OIC was of the view that the historical perspective of racial discrimination and its continuing adverse effects on the lives of people and nations, especially in the economic, social and cultural domains, could not be forgotten. The ramifications of past injustices still haunted the lives of many and, therefore, international cooperation was necessary if obstacles to the attainment of better and equal standards of living were to be removed.

26. OIC was seriously concerned at the dangerous tide of extreme right-wing politics in many parts of the world and the equation of nationalism with patriotism. The increasing trend of incitement to violence, hate speech and advocacy of hatred, xenophobia, racial and religious profiling, racial differentiation — especially in border management — discriminatory immigration practices, Islamophobia, negative stereotyping and stigmatization was alarming, socially unjust and highly condemnable. Indigenous peoples, migrant workers, refugees and other vulnerable groups faced a multitude of issues linked to discrimination and harassment. Those contemporary challenges further underscored the importance of supporting the Ad Hoc Committee's work.

27. OIC reaffirmed its commitment to constructive participation in the Ad Hoc Committee's discussions and urged all the other countries and regional groups to set aside political differences and work to find commonalities in order to fulfil the mandate of the Ad

Hoc Committee. Together, they would defeat the hate mongers and xenophobic demagogues who exploited people's insecurities and incited violence and hatred. Together, they could pave the way for a better future based on shared principles of tolerance, inclusiveness, non-discrimination and interracial harmony.

28. The representative of the Bolivarian Republic of Venezuela congratulated the Chair-Rapporteur on his election and assured him of his country's full support. His country was committed to combating racism, racial discrimination and xenophobia and related forms of intolerance. To that end, there was a need to implement the recommendation contained in paragraph 199 of the Durban Programme of Action and to develop complementary standards that strengthened and updated the existing legal framework, in order to deal with new challenges and new forms of discrimination and protect victims.

29. He said that he regretted the significant lack of support from some groups of countries for the Ad Hoc Committee's mandate over the past few years and called upon countries to ensure the effective implementation of the Durban Declaration and Programme of Action. As in previous sessions, the Bolivarian Republic of Venezuela was willing to continue studying new forms of discrimination and, therefore, valued interaction with experts with a view to identifying gaps and relevant issues relating to the development of complementary standards. His delegation was willing to cooperate with regard to and actively participate in efforts to fulfil the Ad Hoc Committee's important mandate.

30. The representative of South Africa endorsed the statement delivered by Tunisia on behalf of the African Group. She stated that the appointment by acclamation of the Chair-Rapporteur by the Ad Hoc Committee was evidence of the delegations' confidence in his leadership and their appreciation of the manner in which he had steered the body in the past. She congratulated the Chair-Rapporteur on his appointment and said that South Africa looked forward to working constructively with him and other delegations and regional groups to advance the work of the Ad Hoc Committee.

31. South Africa also looked forward to discussions on the new topics and to taking stock of previously considered issues, including heeding the call of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the General Assembly and the Human Rights Council for the necessary complementary standard to be drafted.

32. South Africa hoped that the Ad Hoc Committee would use the current session as an opportunity to consider the scope and modalities of the complementary standards. She trusted that the current session of the Ad Hoc Committee would be truly victim-oriented.

33. The representative of Brazil reiterated the commitment of Brazil to reinforcing the international legal framework against all forms of racism, racial discrimination, xenophobia and related intolerance, including by establishing complementary standards to the Convention. She said that Brazil urged all countries to engage in such efforts in a spirit of compromise and commitment to a world in which every person fully enjoyed freedom from all forms of discrimination and intolerance. Brazil welcomed the topics that would be discussed during the ninth session. In a world increasingly affected by conflict and divisive political discourse that fostered prejudice and hatred, the exchange of views on comprehensive anti-discrimination legislation and protection of migrants, refugees and internally displaced persons was critical. Brazil called on all countries to reinforce their efforts to implement policies, programmes and activities aiming at combating all forms of racism, racial discrimination, xenophobia and related intolerance.

34. Brazil cherished its diversity and rejected all forms of racism, xenophobia and intolerance. In the past few years, Brazil had opened its doors to thousands of migrants and refugees and was fully committed to sheltering such persons to the extent of its capabilities. Brazil understood that human mobility was inherent to the human condition but believed that each State had a sovereign right to determine national rules governing admission, subject to international obligations. International displacement should not be criminalized. Migrants and refugees were entitled to fundamental human rights and should be protected against acts of racism, racial discrimination and xenophobia. In addition to facilitating safe, orderly, regular and responsible migration and mobility of people, it was of the utmost

importance to address the drivers of migration, including through strengthened efforts in the fields of development and poverty eradication, especially through technical cooperation.

35. As to the mandate of the Ad Hoc Committee, Brazil called upon all delegations and regional groups to work to build mutual trust and compromise and find common ground on sensitive and important issues concerning the elaboration of complementary standards to the Convention. Brazil looked forward to receiving the Chairperson's text on possible areas of consensus, so that the delegations could consider drafting a non-binding instrument, as a first step towards a more robust document to be accepted by the international community. Brazil also looked forward to constructive and open exchanges during the current session.

36. The representative of Nigeria said that his delegation attached great importance to the work of the Ad Hoc Committee and reaffirmed its full support for and commitment to the Durban Declaration and Programme of Action, which should remain the road map regarding the elimination of all forms of racism, xenophobia, doctrines of racial superiority and related discrimination. Within that framework, there had been many reports pointing to a rising tide of attacks around the world, with victims being targeted on the grounds of religious belief and ethnic or racial origin. The victims had been profiled, targeted, maimed and sometimes killed, despite having worked in and contributed enormously to the economic growth and development of their host countries. His delegation condemned such acts of violence and intimidation and believed that they were largely the result of the collective inability to effectively implement the Durban Declaration and Programme of Action.

37. The fight against racism, racial discrimination, xenophobia and related intolerance was a collective imperative that required the support and contributions of all Member States, if peaceful global coexistence was to be achieved. The way forward was for all to work together at all levels to combat the growing trend of xenophobia and racial profiling. Efforts must be redoubled to limit the contemporary forms of racism that were on the increase, particularly those forms targeting, among others, persons of African descent, immigrants and refugees. Those countries currently plagued by growing racism must take the Durban Declaration and Programme of Action seriously and ensure that it guided domestic policies.

38. Nigeria remained committed to constructive participation in the discussions within the Ad Hoc Committee and called for genuine cooperation in order to address the substantive gaps identified in the existing normative framework and the reservations to the Convention maintained by some States parties. States could also play a significant role by strengthening existing legislation that promoted social harmony.

39. The representative of Libya endorsed the statements made by Tunisia on behalf of the African Group and Pakistan on behalf of OIC. He thanked the Chair-Rapporteur for his work and said that, with his wisdom and informed guidance, the Ad Hoc Committee would be able to achieve concrete results. He stressed the importance of the Ad Hoc Committee's mandate, which was to discuss the complementary standards and the framework for combating racism and racial discrimination. Libya was committed to combating racial discrimination and all other racist and discriminatory practices against refugees and migrants. He drew the attention of the Chair-Rapporteur to the importance of examining the root causes for migration, including poverty, in Africa and elsewhere in the world.

III. General and topical discussions

A. Presentations and discussion on comprehensive anti-discrimination legislation

40. At its 2nd meeting, the Ad Hoc Committee considered agenda item 4. The Chair-Rapporteur explained that, it had not been possible to secure experts to make presentations on the topic of comprehensive anti-discrimination legislation, despite considerable efforts in that regard. Consequently, the Ad Hoc Committee members would discuss the topic without the input of experts. He asked delegations to volunteer to make presentations on comprehensive anti-discrimination legislation and relevant legislative frameworks in their

respective countries and thanked the representative of the European Union for giving the presentation that had initiated the discussions. During the 2nd and 3rd meetings, the representatives of Brazil, the Plurinational State of Bolivia, Cuba, Egypt, the European Union, Jamaica, Japan, Mexico, Pakistan (speaking on behalf of OIC and in a national capacity), South Africa (speaking on behalf of the African Group and in a national capacity), Spain, the United Kingdom of Great Britain and Northern Ireland and the Bolivarian Republic of Venezuela gave presentations on the topic of comprehensive anti-discrimination legislation. A summary of the presentations and the discussion that followed is provided in annex I to the present report.

B. Presentations and discussion on protection of migrants against racist, discriminatory and xenophobic practices

41. At its 4th and 5th meetings, the Ad Hoc Committee considered agenda item 5. E. Tendayi Achiume, Assistant Professor of Law at the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at the African Centre for Migration and Society, University of the Witwatersrand, South Africa, Ibrahima Kane from the Open Society Initiative for Eastern Africa, Peggy Hicks, Director of the Thematic Engagement, Special Procedures and Right to Development Division, Office of the United Nations High Commissioner for Human Rights (OHCHR), and Kristina Touzenis, International Organization for Migration, gave presentations on the topic of protection of migrants against racist, discriminatory and xenophobic practices. A summary of the presentations and the discussion that followed is provided in annex I to the present report.

C. Presentations and discussion on protection of refugees, returnees and internally displaced persons against racism and discriminatory practices

42. At its 6th and 7th meetings, the Ad Hoc Committee considered agenda item 6. Cecilia Bailliet, Professor and Director of the Masters Programme in Public International Law at the University of Oslo, Norway, Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Department of International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), Krassimir Kanev, Chair of the Bulgarian Helsinki Committee and E. Tendayi Achiume, Assistant Professor of Law at the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at the African Centre for Migration and Society, University of the Witwatersrand, South Africa, gave presentations on the topic of protection of refugees, returnees and internally displaced persons against racism and discriminatory practices. A summary of the presentations and the discussion that followed is provided in annex I to the present report.

D. General discussion and exchange of views, 8th meeting

43. At the Ad Hoc Committee's 8th meeting, the Chair-Rapporteur proposed beginning with general discussions and an exchange of views on agenda item 4. The Chair-Rapporteur invited the participants to make general comments and asked what conclusions could be reached based on the presentations given by the delegations and the related discussion under the agenda item in question. He briefly adjourned the meeting to allow for informal consultations on agenda item 4 and on the Chairperson's text, which had been distributed at the end of the 6th meeting.

E. General discussion and exchange of views, 9th meeting

44. At the Ad Hoc Committee's 9th meeting, the Chair-Rapporteur proposed beginning with general discussions and an exchange of views on agenda items 5 and 6. The Chair-

Rapporteur recalled the need to move forward and to agree on a set of conclusions and outcomes by the end of the session. He recalled that those conclusions and outcomes should be based on the expert presentations given to the Ad Hoc Committee and the related discussions held over the past week. He called for views and analysis from the members of the Ad Hoc Committee.

45. Noting that copies of the expert presentations were also available in the room, the Chair-Rapporteur briefly adjourned the meeting to allow for their review.

46. The representative of the European Union suggested that the Ad Hoc Committee merge the conclusions and recommendations concerning agenda items 5 and 6 on migrants and refugees, given that both agenda items concerned non-nationals, in order to arrive at a common set of recommendations.

47. The permanent representative of Jordan to the United Nations Office and other international organizations in Geneva noted that her country had always insisted on differentiating between migrants and refugees, as the legal regimes applied to each of those groups differed. The representative of Egypt stated that the recommendations on those groups should not be merged because migrants and refugees were treated differently in international law and it was important not to dilute States' obligations.

48. The representative of South Africa recalled the experts' references to the rise in racism and xenophobia and said that the conclusions should address that point.

49. The representative of Egypt suggested including a reference to Islamophobia in the draft conclusions and recommendations, noting that there was a need for political will to deal with some of the root causes of migration. The representative of Libya endorsed the proposal made by the representative of Egypt.

50. The representative of the European Union suggested building on the recommendations contained in the presentation given by Ms. Hicks, Director, Thematic Engagement and Special Procedures and Right to Development Division, OHCHR, as a starting point for discussion.

51. The Ad Hoc Committee began preparing the in-session draft conclusions and recommendations.

F. Update discussions and exchange of views, 10th, 11th and 12th meetings

52. At the Ad Hoc Committee's 10th meeting, the Chair-Rapporteur proposed an update discussion on xenophobia, based on the Chairperson's text. He recalled that, at the eighth session, the Ad Hoc Committee had requested that the Chair-Rapporteur prepare and present a document compiling the topics and substantive issues considered by the Ad Hoc Committee over its previous seven sessions and put forward his views on areas of possible convergence concerning the elaboration of complementary standards. He encouraged the members of the Ad Hoc Committee to consider the proposed text/document, which had been made available in the room at the close of the 6th meeting and disseminated by email to Regional Coordinators, with a view to making recommendations concerning the strengthening of the Convention.

53. At its 11th meeting, the Ad Hoc Committee continued with a general discussion and an exchange of views on agenda items 4, 5 and 6. The Chair-Rapporteur called on the Ad Hoc Committee members to try to identify common ground and to provide comments and views. The Ad Hoc Committee continued work on the in-session draft conclusions and recommendations.

54. The Ad Hoc Committee also considered agenda item 9 on xenophobia in the light of the Chairperson's text. The Chair-Rapporteur reiterated that the text represented his personal assessment of the key themes and topics addressed during the previous eight sessions. The Chairperson's text contained materials that could be used by the Ad Hoc Committee to identify commonalities and as a foundation, taking into account the adoption of General Assembly resolution 71/181. He added that the Ad Hoc Committee members

should analyse the text/document and develop their own readings of the thematic issues. Committee members were welcome to add their views.

55. At the Ad Hoc Committee's 12th meeting, the Chair-Rapporteur specifically introduced the section of the Chairperson's text that focused on xenophobia.

56. The Chair-Rapporteur first recalled that the Durban Declaration and Programme of Action explicitly acknowledged that xenophobia, in its different manifestations, was one of the main contemporary sources and forms of discrimination and conflict — the combating of which required urgent attention and prompt action by States, as well as by the international community — and that Human Rights Council decision 3/103 specifically called for the adoption of new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred.

57. The Chair-Rapporteur then identified the following eight issues, which in his view, were of particular significance and had been discussed during previous sessions of the Ad Hoc Committee:

(a) The absence of a clear definition for the term "xenophobia". On that point, the Chair-Rapporteur referred to different definitions of that term, including the dictionary definition and that used by Ms. Hicks in her presentation to the Ad Hoc Committee. He also referred to the 2008 European Union Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law;

(b) The fact that, although the terms "xenophobia" and "racism" were sometimes used interchangeably, they referred to two differing phenomena;

(c) The need to strengthen the monitoring powers and procedures of the Committee on the Elimination of Racial Discrimination;

(d) The need to strengthen national mechanisms;

(e) The need for human rights education, training and awareness-raising concerning xenophobia;

(f) The need to promote intercultural dialogue and non-discrimination education;

(g) The need to condemn all xenophobic actions and discourse;

(h) The need for mandatory human rights training on xenophobia.

58. The representative of South Africa said that she welcomed the reference to the Durban Declaration and Programme of Action contained in the Chairperson's text. She said that no convincing case had been made for the need to have a clear definition of the term "xenophobia", any such definition should be inspired by human rights laws and legal wording rather than being taken from a dictionary.

59. The representative of the European Union said that she had not yet received comments from all members of her regional group on the Chairperson's text. Nevertheless, certain points must be clarified regarding the 2008 European Union Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. In particular, she said that the Framework Decision did not define the term "xenophobia" per se but criminalizes certain acts that respond to certain criteria, which notably have to be crimes punishable by law. Hence, the Framework Decision criminalized hate speech but not xenophobic fears and attitudes. The Framework Decision had been prepared taking into consideration existing human rights law, notably article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 20 of the International Covenant on Civil and Political Rights, which included racial discrimination. The Ad Hoc Committee had been working on the issue of xenophobia and the absence of a definition of the term "xenophobia" did not seem to bring issues of clarity to its work.

60. The Chair-Rapporteur adjourned the 12th meeting to allow for informal discussions, following which the meeting was reconvened. The Ad Hoc Committee then discussed the fact that racial discrimination and xenophobia had been identified as distinct phenomena. It also discussed the treatment of non-nationals within the meaning of the International

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Chair-Rapporteur asked whether a table of the international treaties, cross-referencing the international standards, might be useful to the work of the Ad Hoc Committee.

61. The Ad Hoc Committee also discussed the topic of national mechanisms as included in the Chairperson's text. The representative of South Africa stated that the starting point should be paragraph 199 of the Durban Programme of Action, referring to the elaboration of complementary standards. In that regard, strengthening national standards would not be part of international standards.

62. The representative of the European Union stated that the Chairperson's text appeared to refer to or consider the implementation of existing international standards, noting that there were already international standards on some of those issues.

G. General discussion and exchange of views, 13th meeting

63. At the 13th meeting, the Chair-Rapporteur proposed continuing the discussion on agenda items 9 and 10 based on the Chairperson's text.

64. The representative of the European Union said that she welcomed the Chairperson's text, which represented an in-depth proposal touching upon multiple issues, including proposals concerning obligations that States already had under the Convention, policy proposals and questions related to legal concepts. She had shared the Chairperson's text with European Union Member States, but it was unlikely that all delegations would provide feedback and build a common position within a week.

65. The representative of South Africa said that she welcomed the Chair-Rapporteur's proposed text, noting that it referred to different agenda items. She suggested that the Ad Hoc Committee should not address the topic of national mechanisms, recalling that, during the previous meeting, it had been proposed that the topic be referred to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

66. The Chair-Rapporteur proposed that the delegations of South Africa and the European Union develop language for the conclusions of the Ad Hoc Committee's discussions on agenda item 10, on national mechanisms, and agenda item 9, on xenophobia, respectively.

67. The representative of the Indian Council of South America, speaking on behalf of the Indian Council of South America and the Indigenous Peoples and Nations Coalition, addressed an issue that those two organizations considered to be an example of unresolved institutional racial discrimination that persisted in national legislation due to reluctance to address the obligations of Administering Powers and shortcomings concerning the abolition of racial discrimination in the implementation of Article 73 of the Charter of the United Nations concerning non-self-governing territories in the light of article 15 of the Convention. In that regard, the two organizations suggested that the Ad Hoc Committee request the Committee on the Elimination of Racial Discrimination to either address the issue of the joint petition of the Council, the Coalition and the Koani Foundation; transmit their case to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples; transmit their case for review and instructions to the Committee on the Elimination of Racial Discrimination if necessary; or, request the Committee on the Elimination of Racial Discrimination to adopt a resolution to address shortcomings concerning the implementation of article 15 of the Convention.

68. The 13th meeting was adjourned to allow for informal consultations on the development of language concerning agenda items 9 and 10.

69. Once the meeting resumed, the Chair-Rapporteur proceeded with the discussion of the Chairperson's text and solicited comments from Member States on the section contained therein concerning national mechanisms.

70. The representative of the European Union stated that her delegation considered national mechanisms to be very important and thanked the Chair-Rapporteur for having included the issue in his text. She recalled that European Union Member States already had such mechanisms in place, adding that article 6 of the Convention made provision for national mechanisms and that, consequently, her delegation considered that there was no gap to be addressed in that regard.

71. The Ad Hoc Committee then discussed the issue of procedural gaps with regard to the Convention, which was also covered in the Chairperson's text.

72. The representative of South Africa indicated that, in her view, there was no need for further discussion of the issue of procedural gaps at the current stage.

73. The Chair-Rapporteur asked the delegations whether the Ad Hoc Committee should restate, in the outcome of the ninth session, the recommendations that had been made during the previous session concerning procedural gaps.

74. The representative of the European Union noted that Human Rights Council resolution 34/36 did not take into account the Ad Hoc Committee's recommendation concerning procedural gaps. She therefore proposed that the recommendation not be renewed. In addition, she proposed having one general recommendation on the Chairperson's text, acknowledging that no new elements had arisen for discussion since the previous session of the Ad Hoc Committee.

75. The Chair-Rapporteur said that the Chairperson's text summarized and took into account topics discussed at previous sessions, in order to allow the Ad Hoc Committee to move forward in its discussion on those issues.

H. General discussion and exchange of views, 14th meeting

76. At its 14th meeting, the Ad Hoc Committee again discussed the Chairperson's text, focusing more specifically on the topic of racism and sport. The Chair-Rapporteur introduced the discussion, stating that discrimination in sport was on the rise. He underlined the number of recently reported cases of that phenomenon. He explained that the Chairperson's text provided a summary of previous discussions held by the Ad Hoc Committee and did not include new information. He recalled that discrimination in sport was no more important than discrimination in any other realm of life. He explained that the Ad Hoc Committee had decided to address the point in more depth, largely because of the significant number of reports of cases of racism in sport.

77. The representative of the Russian Federation stated that the Russian Federation was seriously concerned at the continuing rise of neo-Nazism and racism in Ukraine. In that regard, he referred to the racist behaviour of the supporters of Dynamo Kiev football club, on 27 April 2017, during a match against Shakhtar Donestsk, a club with several players of African origin. The Russian Federation was unaware of any reaction from the law enforcement bodies of Ukraine, or of any official condemnation of the behaviour in question. He stated that there had previously been reports of racist behaviour by "Dynamo Kiev" supporters in 2013 and 2015. He hoped that the Ad Hoc Committee would pay particular attention to the 2017 incident, as well as to the rise of racism, and that, in accordance with its mandate, it would take action. The Russian Federation was willing to share video footage of the incident and related reports with interested delegations.

78. The Chair-Rapporteur thanked the representative of the Russian Federation for his statement and solicited comments from the delegations. The representative of South Africa proposed that the Ad Hoc Committee recognize the progress made by OHCHR on the issue of racism in sport, and that it encouraged the Office to continue its work in that regard. Taking into account the earlier suggestion by the representative of the European Union that there be one general conclusion on the Chairperson's text, the Chair-Rapporteur adjourned the meeting to allow for informal discussions, with a view to developing language for conclusions and recommendations on the Chairperson's text.

79. The meeting was later resumed. However, the Ad Hoc Committee agreed that it would not be possible to continue the discussion on the draft conclusions on agenda items 4, 5 and 6 in the absence of delegations that had expressed concerns and diverging views during previous meetings, notably regarding the relationship between the international legal frameworks on refugees and migrants and international human rights law. The Chair-Rapporteur requested the delegations to closely examine General Assembly resolution 71/181, in preparation for a thorough discussion in that regard at the next meeting.

I. Discussion on General Assembly resolution 71/181

80. At its 15th meeting, on 3 May, the Ad Hoc Committee considered agenda item 14, General Assembly resolution 71/181, and the related Human Rights Council resolution 34/36.

81. The Chair-Rapporteur proposed beginning with a discussion on procedural matters linked to General Assembly resolution 71/181 and the related Human Rights Council resolution 34/36, with a view to preparing for the tenth session of the Ad Hoc Committee. He proposed focusing, inter alia, on three points:

(a) Intersessional preparatory work leading to the tenth session:

(i) Informal intersessional consultations among members;

(ii) Intersessional meeting of experts;

(iii) Timelines.

(b) Report to the General Assembly by the Chair-Rapporteur:

Issues to be included in the report of the Chair-Rapporteur to the General Assembly.

(c) Current "track" of the Ad Hoc Committee and the remaining topics.

82. The representative of Brazil stated that her delegation wished to commend the Chair-Rapporteur for his leadership of the Ad Hoc Committee. It particularly appreciated his proposed text/document, which contained some rich, although undeveloped, material that would contribute to the accomplishment of the task of the Ad Hoc Committee. Brazil supported General Assembly resolution 71/181 and Human Rights Council resolution 34/36. Brazil favoured an incremental approach, through the negotiation of a non-binding instrument as a first step towards a more robust document to be embraced by the international community. Brazil was still considering the Chair-Rapporteur's document and agreed that significant intersessional preparatory work would be required in that regard.

83. Brazil believed that the Ad Hoc Committee could discuss the criminalization of acts of a racist and xenophobic nature in sport, which seemed to be one of the areas where there was a consensus within the Ad Hoc Committee and where meaningful results could be achieved. As mentioned in the Chairperson's text, sport could act as a vehicle for peace, human understanding and development. Unfortunately, acts of racism, xenophobia and religious intolerance in football stadiums and other sporting arenas continued to be reported worldwide. Hate speech and racist and xenophobic acts in sport could sometimes have tragic consequences, resulting in the deaths of sports fans and other innocent people. Celebrations of sport conveyed important messages to the public. Impunity could not be allowed to thrive in any field, in particular in fields that had the potential to serve as amplifiers of unlawful behaviour. Combating racism in sport sent an important message against impunity and could set an example to wider society. Brazil remained open to and engaged in the work of the Ad Hoc Committee.

84. The representative of the European Union stated that the European Union remained fully committed to the total elimination of racism, racial discrimination, xenophobia and related intolerance, including its contemporary forms, as well as to the promotion and protection of human rights for all without discrimination on any grounds. The European Union had taken legal and practical steps to address racism and xenophobia, including the adoption of a strong legislative framework and of the Framework Decision of 2008 obliging

the European Union Member States to criminalize certain forms and expressions of racism and xenophobia.

85. In the view of the European Union, the International Convention on the Elimination of All Forms of Racial Discrimination — to which all European Union Member States were parties — was, and should remain, the basis of all efforts to prevent, combat and eradicate racism. She noted that, as demonstrated by the persistent spread of racism and racial discrimination across the world, efforts to implement the Convention were flagging. Therefore, the European Union considered that the Ad Hoc Committee should continue to focus on the full and effective implementation of the Convention, in order to achieve the goal of completely eliminating the scourge of racism in all its forms.

86. Her delegation did not see any agreement on the fact, nor evidence, that the Convention had gaps, nor that it failed to address contemporary forms of racism. In that light, the European Union did not support General Assembly resolution 71/181, Human Rights Council resolution 34/36, or the commencement of negotiations on an additional protocol to the Convention criminalizing acts of a racist or xenophobic nature.

87. Discussions within the Ad Hoc Committee on the need for possible complementary standards with regard to the Convention were still ongoing. Other options, such as non-legally binding instruments, were still under consideration and could be further explored on a consensual basis. The global fight against racism, racial discrimination, xenophobia and related intolerance concerned everyone in every region of the world and was an issue on which the international community should be united. In that spirit, the European Union was, and would remain, open to engaging in a constructive dialogue on the topic with all stakeholders.

88. The representative of the Bolivarian Republic of Venezuela stated that many delegations had been unable to attend meetings during the current session of the Ad Hoc Committee because of competing agendas, notably with regard to the twenty-seventh session of the universal periodic review. That issue should be taken into consideration when planning future sessions.

89. His country continued to strongly support the work of the Ad Hoc Committee, which, in its view, represented an important instrument for the development of complementary standards. New types of discrimination had been reported and his delegation believed that they had to be addressed. He thanked the Chair-Rapporteur for the Chairperson's text and affirmed the support of the Bolivarian Republic of Venezuela for General Assembly resolution 71/181 and the related Human Rights Council resolution 34/36. He stressed that complementary standards should be adopted and welcomed and expressed his support for the Chairperson's text. He disagreed with delegations that objected to the development of complementary standards, stating that the adoption of complementary standards was particularly timely, given the rise in racism, discrimination and migration. He endorsed the proposal made by the representative of Brazil that consideration be given to the issue of racism in sport.

90. The representative of Japan endorsed the statement of the representative of the European Union to the effect that there was no need to develop complementary standards. He acknowledged the existence of important shortcomings with regard to the implementation of the Convention and agreed on the need to tackle them. However, in the view of his delegation, the adoption of complementary standards would not be the most effective way to ensure the implementation of the Convention: the continuation of ongoing discussions was preferable.

91. The representative of South Africa proposed that the Ad Hoc Committee continue to work on the topics that it was currently considering, in addition to the new topics referred to in General Assembly resolution 71/181 and the related Human Rights Council resolution 34/36. The Chair-Rapporteur's progress report to the seventy-second session of the General Assembly should reflect his own views on the work of the Ad Hoc Committee, highlighting progress and challenges.

92. The representative of Pakistan thanked the Chair-Rapporteur for his leadership of the Ad Hoc Committee. He endorsed the statement made by the representative of the

Bolivarian Republic of Venezuela concerning the difficulties posed by simultaneous meetings and the need to avoid scheduling clashes regarding the sessions of the Ad Hoc Committee and other meetings in the future. He acknowledged the proposal by the representative of the European Union to continue the discussion on racism and xenophobia, as well as the proposal by the representative of Brazil to address the issue of racism in sport. He also welcomed the expert presentations on those topics, which had significantly enriched the discussion, and stated that the views of the Chair-Rapporteur on those topics should be reflected in the report.

93. The representative of Pakistan, speaking on behalf of OIC, underlined the need to have a discussion on Islamophobia. His delegation was open to engaging in discussions on discrimination on the grounds of any religion, not only Islam. However, Islamophobia currently represented the most prevalent form of discrimination on the basis of religion or belief.

94. The representative of Brazil supported the proposal of the representative of South Africa that the Ad Hoc Committee should discuss other topics in addition to those referred to in General Assembly resolution 71/181 and the related Human Rights Council resolution 34/36 and that the progress report requested by the General Assembly should reflect the Chair-Rapporteur's views on the work of the Ad Hoc Committee.

95. The Chair-Rapporteur summarized the views expressed on the way forward, including the proposal that the Ad Hoc Committee should pursue discussions on current topics in parallel with its work to address the request, made in General Assembly resolution 71/181 and referred to in the related Human Rights Council resolution 34/36. He continued that the Ad Hoc Committee should proceed as in the past with informal intersessional meetings and that experts should be invited to give presentations at the tenth session of the Committee. He took note that, while providing a factual reflection of the ninth session of the Ad Hoc Committee, the report to the seventy-second session of the General Assembly should reflect the Chair-Rapporteur's own views on the progress and difficulties inherent in the work of the Ad Hoc Committee overall.

96. The Chair-Rapporteur asked the members of the Ad Hoc Committee for comments on the content of the request made in General Assembly resolution 71/181 and referred to in the related Human Rights Council resolution 34/36, notably concerning topics to be considered during the tenth session.

97. The representative of the European Union reiterated the need to have more time to reflect on those resolutions, including on procedural aspects. She proposed that the Ad Hoc Committee discuss the list of topics for the next session during the intersessional period between the ninth and tenth sessions.

98. The representative of South Africa, speaking on behalf of the African group, supported the proposal made by the representative of Pakistan, speaking on behalf of OIC, concerning the holding of a discussion of Islamophobia during the next session.

99. The representative of Mexico noted the different views expressed by various delegations concerning the mandate of the Ad Hoc Committee. She emphasized the importance of working on the basis of a consensus. In that light, she supported the proposal of the representative of the European Union concerning a discussion of the list of topics during the intersessional period, with a view to reaching a consensus.

J. General discussion and exchange of views, 16th and 17th meetings

100. At its 16th meeting, the Ad Hoc Committee resumed the drafting of the in-session draft text on conclusions and recommendations.

101. With regard to the list of topics to be discussed at the tenth session, the Chair-Rapporteur recalled the working document of the Ad Hoc Committee entitled "List of topics discussed at the second session" which referred to several topics related to Islamophobia, including No. 1 on advocacy and incitement to racial, ethnic, national and religious hatred; No. 3 on discrimination based on religion or belief; No. 10 on intercultural

and interreligious dialogue; and No. 17 on racial, ethnic and religious profiling and measures to combat terrorism. The Chair-Rapporteur proposed employing that language and listing of topics when drawing up the list of topics for the tenth session.

102. The representative of the European Union reiterated that the discussion on the list of topics should be deferred to the intersessional period.

103. The Chair-Rapporteur recalled the need for the Ad Hoc Committee to have a clear timeline for structuring the programme of work of the tenth session.

104. At its 17th meeting, the Ad Hoc Committee continued discussions on the in-session draft document on conclusions and recommendations, exchanging views on the issues. The meeting was adjourned to allow for additional consultations, with a view to arriving at an agreement.

IV. Adoption of the report

105. At the 18th meeting, the Ad Hoc Committee resumed its discussion on the draft in-session document on conclusions and recommendations, with a view to adopting agreed language.

106. The Chair-Rapporteur took stock of the situation concerning the negotiations that had been held during previous meetings of the current session of the Ad Hoc Committee, as well as its informal meetings, indicating that the Ad Hoc Committee had not agreed on whether the issue of Islamophobic practices should be included in or excluded from the conclusions and recommendations. Given that the question of the inclusion of language referring to Islamophobia and Islamophobic practices was referred to in the introductory paragraphs and the paragraphs dealing with migrants and refugees contained in the draft text, he proposed omitting those paragraphs from the conclusions and recommendations and adopting only those paragraphs that indicated the direction to be taken at the next session and provided guidance on how to conduct work in that regard. The Chair-Rapporteur proposed the following text for adoption by the Ad Hoc Committee:

> "The Committee noted the Chairperson's text to advance the work of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of all Forms of Racial Discrimination and resolved to keep it under consideration.
>
> The Committee discussed General Assembly resolution 71/181 and resolved to continue consultation during the intersessional period."

107. The representative of Egypt expressed appreciation for the Chair-Rapporteur's efforts in support of the Ad Hoc Committee reaching a consensus on the language to be used in the session's conclusions and recommendations. She objected to the Chair-Rapporteur's proposal that the references to Islamophobia and the paragraphs dealing with migrants and refugees be deleted from the Ad Hoc Committee's conclusions and recommendations, explaining that those points were of the utmost importance for her delegation. In addition to being a contemporary issue, as a term, "Islamophobia" had already garnered consensus in the context of the Durban Declaration and Programme of Action and, therefore the issue fell under the mandate of the Ad Hoc Committee. She said that she regretted the Ad Hoc Committee's failure to reach a consensus on the issue of Islamophobic practices and the fact that the conclusions and recommendations would not reflect fully the discussions held during the ninth session of the Ad Hoc Committee.

108. The permanent representative of Jordan to the United Nations Office and other international organizations in Geneva agreed with the Chair-Rapporteur's proposal to delete the paragraphs dealing with migrants and refugees. However, she endorsed the proposal made by the representative of Egypt concerning the inclusion of the issue of Islamophobia in the conclusions and recommendations of the ninth session. The representative of Bangladesh endorsed the statements made by the representative of Egypt and the permanent representative of Jordan to the United Nations Office and other international organizations in Geneva.

109. The Chair-Rapporteur clarified his proposal, stating that he had proposed omitting the paragraphs on migrants and refugees because the Ad Hoc Committee could not agree on whether or not the issue of Islamophobia should be reflected in those paragraphs. Hence, it seemed highly unlikely that the Ad Hoc Committee would agree to include references to Islamophobia while deleting the paragraphs on migrants and refugees. He reiterated, however, the need for the Ad Hoc Committee to adopt conclusions that provided guidance for the future work of this Committee.

110. The representative of Malaysia took the floor to endorse the statements made by the representatives of Egypt, Bangladesh and Jordan on the importance of including references to Islamophobia in the conclusions and recommendations of the ninth session. Given that Islamophobia was a global phenomenon, the Ad Hoc Committee should reflect on the issue, notably by referring to it in its conclusions and recommendations.

111. The representative of the European Union stated that at no point in the negotiations had agreement been reached on the proposal to insert references to Islamophobia into the Ad Hoc Committee's conclusions and, hence, such references could not be included in the draft document of the ninth session. She recalled that she had proposed a compromise consisting of using agreed language from the New York Declaration for Migrants and Refugees, which called on all to respect the human rights of migrants and refugees. It was deeply regrettable that the Ad Hoc Committee had failed to reach a consensus on that point and that it might not adopt conclusions and recommendations for the ninth session.

112. The representative of Pakistan, speaking on behalf of OIC, remarked that the Ad Hoc Committee had done an excellent job of drafting the conclusions and recommendations during the current session and that it would be a great loss not to adopt them. As the representatives of Egypt, Bangladesh, and Malaysia and the permanent representative of Jordan to the United Nations Office and other international organizations in Geneva had previously stated, Islamophobia had always been an important issue for OIC but it was becoming a pressing one because Islamophobic practices were on the rise worldwide. OIC had engaged with the work of the Ad Hoc Committee in a proactive and positive manner since its inception, OIC had supported the mandate of the Ad Hoc Committee and had worked constructively to identify and analyse the gaps in the Convention. Islamophobia had been discussed during the ninth session. Expert presentations had identified gaps concerning xenophobia, racism and sport and Islamophobia. The Ad Hoc Committee had reached conclusions on the first two of those issues in prior sessions, however, it had failed to do so with regard to the third issue. Lastly, he emphasized that Islamophobia was covered by the Durban Declaration. OIC was willing to consider any language — including references to other religions and language from the New York Declaration for Migrants and Refugees — on the condition that language explicitly referring to Islamophobia or Islamophobic practices was included.

113. The Chair-Rapporteur asked the members of the Ad Hoc Committee to focus on the paragraphs that had already garnered consensus, so that the Ad Hoc Committee could proceed with the adoption of the session's conclusions and recommendations.

114. The representative of Egypt reiterated that her delegation disagreed with the deletion of the paragraphs dealing with migrants and refugees. The absence of consensus concerned the inclusion of references to Islamophobia only and, therefore, it would be a pity to exclude those paragraphs on migrants and refugees from the conclusions.

115. The representative of Azerbaijan took the floor to endorse the statements made by the representatives of Egypt, Bangladesh, Malaysia and Pakistan and the permanent representative of Jordan to the United Nations Office and other international organizations in Geneva on behalf of OIC on the importance of including Islamophobia in the Ad Hoc Committee's conclusions and recommendations.

116. The Chair-Rapporteur and the representative of South Africa expressed their concern that no agreement would be reached during the ninth session, given that all arguments and proposed language had already been discussed at length during previous meetings and informal sessions and no agreement had been found.

117. The representative of Pakistan requested that the meeting be adjourned briefly to allow for additional consultations, following which the meeting was resumed.

118. The representative of Pakistan, speaking on behalf of OIC, proposed that the paragraphs on the Chairperson's text and the General Assembly resolution 71/181, which were the two paragraphs proposed earlier by the Chair-Rapporteur as the Ad Hoc Committee's conclusions, be kept and reflected in the report as the conclusions and recommendations of the Chair-Rapporteur.

119. The Chair-Rapporteur noted that some reformulation was required if those two paragraphs were to be subsumed into the report as a part of the conclusions and recommendations and asked the delegates to propose agreed language.

120. The representative of Egypt took the floor to clarify the proposal of OIC, indicating that the aim was only to have some guidance for the future session of the Ad Hoc Committee; the Ad Hoc Committee did not need to agree on the language of the conclusions or recommendations of the Chair-Rapporteur. Similarly, the representative of South Africa suggested that the Ad Hoc Committee not enter into negotiations at the current stage.

121. The Committee decided not to adopt any conclusions and recommendations for the ninth session.

122. The Chair-Rapporteur invited final general statements from participants.

123. The representative of the Indian Council of South America took the floor to read out the conclusion and recommendation he had prepared for the Ad Hoc Committee, proposing that the Ad Hoc Committee conclude that the historical root of doctrines of superiority and racial discrimination in high court decisions persisted in law, legislation and policy as a result of the refusal to abolish discriminatory law and policy in the administration and implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Procedural gaps prevented the Committee on the Elimination of Racial Discrimination from reviewing discriminatory situations and making recommendations to the appropriate bodies of the United Nations, in accordance with article 15 and international standards predating the adoption of General Assembly resolution 1514 (XV). In addition, he proposed that the Ad Hoc Committee recommend that the procedures of the Committee on the Elimination of Racial Discrimination be reviewed to identify gaps and to allow the Committee on the Elimination of Racial Discrimination to implement its own procedures concerning the transmission of petitions to the appropriate body of the United Nations for review, in accordance with article 15 of the Convention. He added that he was presenting the recommendation in order to stress the existence of procedural gaps in the Convention.

124. The representative of South Africa, speaking on behalf of the African Group, expressed appreciation to the Chair-Rapporteur and all the members of the Ad Hoc Committee and reiterated the African Group's view that it was important for the Ad Hoc Committee to begin reflecting on the issues of anti-Semitism, xenophobia, Islamophobia and racist attacks through cyberspace and work on addressing the gaps relating to those issues that existed in the Convention.

125. The representative of the European Union expressed appreciation to all, noting the importance of the discussions on the issues of migration and refugees and of exchange among delegations, notably on national mechanisms.

126. The representative of Pakistan, speaking on behalf of OIC, expressed sincere appreciation and thanked the other delegations and the experts for the high quality of the discussions held during the current session. He stated that OIC would continue to engage in a positive and constructive manner in the work of the Ad Hoc Committee.

127. The representative of Egypt joined other delegations in expressing appreciation to all. She noted that the discussions were very important and said that she regretted the fact that the Ad Hoc Committee had not been able to adopt conclusions and recommendations at the current session.

128. The Chair-Rapporteur, in his concluding remarks, thanked the members of the Ad Hoc Committee for their cooperation and contributions to the discussions during the session, and closed the meeting.

129. The report of the ninth session was adopted *ad referendum*, with the understanding that delegations would send any technical corrections to their statements in writing to the Secretariat by 19 May 2017.

Annex I

Summaries of the expert presentations and initial discussions on the agenda topics

Comprehensive anti-discrimination legislation

At the second meeting on 24 April, the Ad Hoc Committee considered agenda item 4. The Chair-Rapporteur explained that while many experts on this topic had been approached, it had not been possible to secure experts to make presentations on the topic of comprehensive anti-discrimination legislation. As such, the Ad Hoc Committee members would discuss the topic without the input of experts. He asked delegations to volunteer to make presentations on comprehensive anti-discrimination legislation and relevant legislative frameworks in their respective countries, and thanked the European Union for initiating the discussions with its presentation. During the second and third meetings, the representatives of Brazil, the Plurinational State of Bolivia, Cuba, Egypt, the European Union, Jamaica, Japan, Mexico, Pakistan (speaking on behalf of the Organization of Islamic Cooperation and in a national capacity), South Africa (speaking on behalf of the African Group and in a national capacity), Spain, the United Kingdom of Great Britain and Northern Ireland and the Bolivarian Republic of Venezuela made presentations on the topic of comprehensive anti-discrimination legislation. A summary of these presentations and the discussion with the participants that followed is provided in annex I to the present report.

The representative of the European Union welcomed the inclusion of a discussion on comprehensive anti-discrimination legislation in the programme of work. The European Union firmly believed that the adoption of a comprehensive anti-discrimination legislation was crucial to fight discrimination in all forms and strongly supported the adoption of a holistic and integrated approach, capable of providing effective protection, also bearing in mind cases of multiple and intersecting forms of discrimination.

As enshrined in its treaties, the European Union is founded on the values of equality, non-discrimination and tolerance and, in implementing its policies and activities, the European Union aimed to fight discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Union's commitment to the principle of non-discrimination is further reiterated in Article 21 of the Charter of Fundamental Rights of the European Union, which has acquired the same legal values of the Treaties since the entry into force of the Lisbon Treaty in 2009. Moreover, the prohibition of discrimination is strengthened by Article 14 of the European Convention on Human Rights.

The representative stated that the promotion of equality and non-discrimination had been a core element of the European Union's goals, legislation and institutions from its early days. The Treaties of Rome signed in 1957, provided the competence to develop the first Equality Directives: the Equal Pay Directive of 1975 and the Equal Treatment Directive of 1976, which prohibited discrimination on grounds of gender in access to employment, vocational training and promotion, and working conditions.

The Treaty of Amsterdam of 1997, which introduced a specific European Union competence to combat discrimination on a wide range of grounds, gave new impetus to the development of an EU anti-discrimination legislative framework.

The adoption of two fundamental European Union Directives in the fight against discrimination: the Racial Equality and the Employment Equality Directives, both adopted in 2000, were major achievements. The two ground-breaking Directives prohibit discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation, and provide protection in key areas of life, such as employment, education, social security, healthcare, access to and supply of goods and services. Both instruments provide for the obligation to ensure the availability of judicial remedies to victims and also provide grounds for taking positive actions to promote equality.

In 2008, the adoption of the Framework Decision on combating racism and xenophobia by means of criminal law set common European Union standards to ensure that racist and xenophobic offences are sanctioned in all Member States by a minimum level of effective, proportionate and dissuasive criminal penalties. These instruments, together with the Victim's Rights Directive, the Audiovisual Media Services Directive and other relevant legislation, establish a comprehensive and advanced European Union anti-discrimination legal framework.

The European Union institutions are strongly focused on the fight against discrimination, racism and xenophobia. The European Commission, which is primarily tasked with the mandate of ensuring the correct legal transposition, implementation and enforcement of the existing legislative instruments, also encourages the exchange of good practices between the European Union Member States. To this end, the Commission established an Expert Group on non-discrimination in 2008 and an Expert Group on racism and xenophobia in 2009. In addition, the European Union Fundamental Rights Agency, established in 2007, plays a crucial role in collecting, analysing and disseminating objective and comparable data on racism, xenophobia, anti-Semitism, Islamophobia and other forms of intolerance and in providing independent and evidence-based policy guidance on equality and non-discrimination to the European Union institutions and the Member States. The Agency assists the Member States in designing and implementing relevant measures to combat hate crime in the framework of the Working Party on Hate Crime, set up in 2014.

The European Union's commitment to the fight against discrimination and inequality is further strengthened by its continuous engagement with the Council of Europe. The representative said that the European Union actively participates in the European Commission against Racism and Intolerance as an observer, and cooperates with the Council of Europe through numerous Joint Programmes addressing different aspects of discrimination. The European Union firmly believed in the relevance of developing comprehensive anti-discrimination legislation and would continue to engage in the promotion of equality and non-discrimination.

The representative of Spain shared the main elements of the legal framework established by Spain to combat all forms of discrimination, including racial discrimination. Spain was committed to combating racism, racial discrimination, xenophobia and all related intolerance and considered that the International Convention on the Elimination of All Forms of Racial Discrimination, has great potential to face these challenges of the international community and must be fully implemented.

The representative described the Spanish framework, explaining that it offered comprehensive protection against any kind of discrimination (and this notwithstanding the legal framework of the European Union which has already been described by the Delegation of the European Union and which is fully applied in Spain).

Spain is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, ratifying it in 1969, when it entered into force in the country. Its provisions have since become part of the Spanish legal system. Several articles of the Spanish Constitution are relevant; in addition to articles 9.2 and 10, which make direct constitutional reference to international human rights standards, article 14 states that "Spaniards are equal before the law without any discrimination whatsoever prevailing. Race, sex, religion, opinion or any other personal or social condition or circumstance '(Article 14). Although this provision refers to the Spaniards, the previous article (13.1) states that "foreigners shall enjoy in Spain the public liberties guaranteed by this title in the terms established by treaties and the law".

The Law on the Rights and Freedoms of Foreigners in Spain and its Social Integration (LO 4/2000, of 11 January), with its successive reforms, developed the constitutional mandate established in Article 13.1 of the Constitution and combined it with the international commitments undertaken by Spain, especially as a member country of the European Union. This law established in its art. 3.2 that the norms concerning the fundamental rights of foreigners will be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same matters in force in Spain, without the possibility of claiming the profession of

religious beliefs or ideological convictions or cultural diversity to justify the performance of acts or conduct contrary to them. Article 23 includes in its first paragraph the definition of discrimination: "any act that directly or indirectly leads to a distinction, exclusion, restriction or preference against an alien based on race, colour, descent or national or ethnic origin, religious beliefs and practices, and which has the purpose or effect of destroying or limiting the recognition or exercise, on an equal basis, of human rights and fundamental freedoms in the political, economic, social or cultural field". Section 2 specifies various categories of acts that are considered to be discriminatory. Article 24 guarantees judicial protection against any discriminatory practice and also establishes in this Act sanctioning provisions.

In addition, the Law against Violence, Racism, Xenophobia and Intolerance in Sport, 19/2007, of July 11, contemplates a set of measures aimed at the eradication of these practices, establishing a sanctioning regime as well as a regime discipline against such manifestations.

The Spanish Criminal Code contemplates a wide catalogue of prohibited behaviours intended to eradicate racism and xenophobia. The current Penal Code increased the scope of punishment for actions relating to racial discrimination.

Finally, in Spain there is a particular emphasis on the adoption of operational measures to make legal equality a reality. The National and Integral Strategy to combat racism and xenophobia, is the main instrument of action in this area, as well as the Strategic Plan for Citizenship and Integration or the National Strategy for Inclusion Social Situation of the Roma Population 2012–2020. The Council for the Elimination of Racial or Ethnic Discrimination has been created and the elaboration of a mapping of discrimination in Spain to ascertain perceptions of society and the potential victims of discrimination, as well as discriminatory practices and the main empirical data of discrimination in Spain to improve the development of anti-discrimination policies is taking place. There are also measures for the improvement of systems of analysis, information and criminal legal action on qualitative and quantitative data on racism, racial discrimination, xenophobia and related intolerance, aimed at a better understanding of these phenomena.

Training courses of security forces and bodies in the identification and registration of racist or xenophobic incidents, and the publication of an annual report on hate crimes in Spain, intended to improve monitoring have been undertaken. The creation of the post of Deputy Prosecutor of the Attorney General of the State for Criminal Protection of Equality and against Discrimination, as well as specialized prosecutors in all the autonomous communities is another development. The Penal Code was reformed in 2015 to review and improve the regulation of hate speech and violence against groups or minorities. Penalties had been increased and new cases of hate crimes were being catalogued. The preventive role played by the Network of Offices for the Care of Victims of Discrimination of the Council for the Elimination of Racial or Ethnic Discrimination was also highlighted.

The representative of the United Kingdom of Great Britain and Northern Ireland also made an intervention. He stated that the United Kingdom is a multi-ethnic and multi-faith country, and has long been a country of inward and outward migration. It is now a very diverse society. Notwithstanding this progress by communities of ethnic minorities in business, sport, arts, Government and Parliament, there is further to go. The Government of the United Kingdom wants to create a genuine opportunity country, where ethnic origin and background are not allowed to become a barrier to advancement.

He noted that 2015 marked not only the fiftieth anniversary of the International Convention on the Elimination of All Forms of Racial Discrimination but also the fiftieth anniversary of the first piece of domestic legislation against racial discrimination, the Race Relations Act 1965. This historic legislation opened the way to all subsequent equalities legislation, which protects all individuals from direct and indirect discrimination, victimisation and harassment in employment, in the provision of goods and services, and in public functions. Domestic equalities legislation is now contained within a single equality act, which covers nine protected grounds, including race. The Equality Act also places a positive duty on public bodies to give due regard to the need to eliminate discrimination and promote equality of opportunity and good relations in their public functions.

He stated that while the Government of the United Kingdom of Great Britain and Northern Ireland is proud of its equalities legislation, legislation alone is not enough. The Government has set out a series of goals to improve opportunities for black and minority ethnic people.

A review of the criminal justice system in England and Wales is taking place to investigate bias against black defendants and other ethnic minorities, reporting later 2017. With significant overrepresentation of black, Asian and minority ethnic individuals in the criminal justice system, the review will consider their treatment and outcomes to identify and help tackle potential bias and prejudice. Universities are being required to publish admissions and retention data by gender, ethnic background and socioeconomic class. The intention is to enshrine the duty in legislation. Under the proposal, universities will have a new 'transparency duty', part of a drive to highlight those institutions failing to improve access.

The representative stated that the Government is clear that hate crime of any kind, directed against community, race or religion, has no place in British society. In 2016, the Government published a new hate Crime Action Plan, which set out how the Government will tackle this divisive crime. Together, three government ministries, the Home office, the Ministry of Justice, and the Department for Communities and Local Government, are working together to prevent hate crime, support victims and prosecute the perpetrators.

He noted that it has been an important objective of Government policy for several years to raise awareness of hate crime and to encourage reporting. It is possible that the increase in reporting is a result of greater knowledge about hate crime overall, increased reporting of the topic in the media, and greater confidence in the value of reporting it. Recent reports of hate crime have been taken very seriously, by Government and all parts of civil society.

The Chair-Rapporteur thanked the three delegations for their presentations under item 4, and invited the Committee for additional interventions and comments on the topic.

The representative of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC) noted steps had been taken by OIC countries to address the contemporary manifestations of racism, racial discrimination, xenophobia and religious intolerance. He stated that OIC countries were multicultural and multi-ethnic. It was leading on the Human Rights council resolution 16/18 on "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief" and its implementation through the Istanbul process as a ways and means to address issues of religious intolerance around the world. Pakistan made additional remarks in its national capacity stating that the Constitution of Pakistan and various specific legislation provided protection in respect of discrimination and religious belief, and that Pakistan had a National Action Plan as well. The representative inquired about how to proceed with the topic of comprehensive anti-discrimination legislation, and how it was related to the Ad Hoc Committee's work and mandate.

The representative of South Africa inquired about the agenda item on comprehensive anti-discrimination legislation, noting that while its delegation would be pleased to hear about national legislation; however, inquiring how it assisted the work of the Ad Hoc Committee. The representative asked whether elements from the European Union Framework decision of 2008 would be helpful to the work of the Ad Hoc Committee.

The Chair-Rapporteur raised the question of the legal status of the European Union Framework decision 2008, to which the representative of the European Union explained that the Framework must be transformed into the domestic framework to ensure uniformity in all twenty-eight Member States. She added that there was no explicit definition of racism or xenophobia in those decisions, and that rather the link should be made between the mandate of the Ad Hoc Committee and the ICERD and the general recommendations of the CERD Committee. With regard to hate speech, motivation based on hatred could be an aggravating element in jurisdictions.

The representative of South Africa stated that it was not advisable for the Committee to delay progress in its work by legal definitions, noting that racism was not defined in the

ICERD either, and yet its meaning was understood. Committee discussions on the possible threshold for standards of conduct (for example, "grave" or "aggravated") would be of greater benefit.

The representative of Spain stated that the present tools and instruments were sufficient and that national level laws and actions should be directed to provide protection to victims. He noted that the current criminal law regime already provides a proportional and appropriate response to these phenomena.

The representative of Pakistan, speaking on behalf of OIC noted current legislation being enacted around the world relating to hate speech and border management, with implications for racial and religious profiling. He questioned whether there was legislation in place in various jurisdictions against racial and religious profiling, and stated that it would be interesting to hear and share comparative legislative experiences in this area, particularly relating to Islamophobia, negative stereotyping, and border management issues.

At its 3rd meeting on 25 April, the Ad Hoc Committee continued its consideration of anti-discrimination legislation under item 4.

The representative of South Africa delivered a statement on behalf of the African Group. She stated that the struggle for the decolonisation of Africa and the right to self-determination and independence, starting from the founding of the Organisation of African Unity (OAU) in 1963 of the African Union, has been preoccupied with human rights. The fight for the liberation and independence from colonialism and apartheid was an anti-racial discrimination struggle. When the continent of Africa waged the struggle against colonialism and apartheid, it waged war against racism, which is deeply embedded within the universal human experience and the contemporary global village in which all people lived. The anti-discrimination discourse could not be divorced from the continent's historical context, particularly when it is understood that the struggle for human rights and the establishment of a human rights system are products of a concrete social struggle.

It was for this reason that the Constitutive Act of the AU — including, amongst others, (a) the Charter on Human and People's Rights; (b) the Protocol on the Peace and Security Council; (c) Protocol on the Rights of Women; and (d) African Youth Charter — has further made non-discrimination an explicit part of its mandate, and mainstreamed human rights in all its activities and programmes.

The representative stated that when the United Nations member states gathered in Durban in 2001, it was because the international community came to a realization that despite the end of colonialism and apartheid, racism and sexism have not been quietened and it did indeed exist. There was also further realization that contemporary manifestation/s of racism, including xenophobia, anti-Semitism, Islamophobia and expressions of racism through cyber space. Race and gender continued to define the actual living spaces that billions of human beings occupy. They dictated the boundaries that frustrate the translation into reality of the noble concepts that people are born equal. Paragraph 199 of the Durban Programme of Action was indication that Member States of the United Nations agree and uphold the view that racism must be defeated. In this context, the African Group recommended that the draft protocol on xenophobia should recognise that racism and xenophobia constitute a threat against persons, and groups of persons, which are a target of such behaviour. The protocol should therefore be aimed at criminalising grave violations and abuses. The Committee needed to recognise that combating racism and xenophobia required various kinds of measures in a comprehensive framework.

The representative of India stated that his delegation firmly believed that the racism and racial discrimination are the most pervasive acts often leading to serious violation of human rights.

He shared some of the existing anti-discriminatory laws and policy in India. The representative cited the legal provisions and mechanism enshrined in our Constitution that provide an overall framework to achieve equality of opportunity to all its citizens and persons alike. Articles 14, 15, 16 and 18 of the Constitution of India are some of the key provisions that assure non-discrimination. Article 14 of Constitution of India states: "The State shall not deny to any person equality before the law and equal protection of laws

within the territory of India." Article 15 (1) says, "The State shall not discriminate against any citizen on grounds of religion, race, sex, place of birth or any of them". Again Article 16 (1) says, "There shall be equality of opportunity of all citizens in matters relating to employment of appointment to any office under the State".

India had in the context of private sector employment, a comprehensive action plan that would address discrimination and harassment at the work place. The Indian judiciary over the years, had taken a pro-active approach to protect employees in the instances of discrimination and harassment by any employer. At workplaces, most employers comprehensively cover all general discrimination and harassment issues as part of their internal policies. To name specific legislation in this regard is: Sexual Harassment of Women at Workplace Act, 2013 (SHWW Act) which is a notable statute that would ensure non-discrimination and protect women from being harassed at workplace. Many private workplaces had already ensured as a matter of their internal policy, a free and fair access to their employees having disabilities. In a recent decision of the Indian judiciary, it has been noted that a company has duty to treat all persons with disabilities with dignity and respect, and any discrimination against or harassment of such persons with disabilities shall result in a fine imposed on or other action being taken against the company.

India was one of the earliest countries to sign and ratify the International Convention on the Elimination of All Forms of Racial Discrimination. The representative stated that India practices dualism, and with extensive constitutional provisions and other legislation in place, India can fully ensure and guarantee the effective implementation of our international obligations under ICERD.

Like many other countries, India also recognized the significance of the Durban Declaration and Programme of Action (DDPA). A notable achievement by the international community aimed at developing international standards to strengthen and update international instruments against racism, racial discrimination and xenophobia in all its aspects. In fact, the Durban Declaration explicitly calls upon States to design, implement and enforce effective measures to eliminate this phenomenon. As mentioned earlier by other representatives, paragraph 199 of the Durban Programme of Action mandates us to elaborate some complementary standards that would address the concerns of racism, racial discrimination and xenophobia.

He commented that neither the Indian constitution nor any specific legislation defines the meaning and scope of xenophobia, and that India was keen to listen to others where some of these complex terms have been defined in their respective national legislation.

The representative of Egypt shared the country's experience in the field of combatting discrimination. In 2014, a new constitution had been enacted that prohibited all forms of discrimination. Discrimination was consequently a crime that was punished by law. Egypt had established an independent commission that dealt with discrimination and several laws new laws had been enacted in order to address these phenomena. The representative also stated that Egypt had also launched several programmes against discrimination, often in cooperation with national human rights institution and civil society. These programmes covered for example, the housing sector. The national human rights institution was also in charge of studying complaints received from victims of discrimination. In addition, all ministries had installed focal points for women and people with disabilities. At the international level, Egypt noted that it was concerned about the rise of racism and discrimination, and expressed its hope that a draft protocol would address those matters.

The representative of Cuba gave a presentation on existing anti-discrimination legislation in the country, noting that current legislation that prohibited discrimination. The representative cited articles of the Constitution prohibiting discrimination, in particular Chapter VI, Article 14 which provides that all citizens had the same rights and responsibilities and Article 42 that specifically prohibited racial and other forms of discrimination. Based on Article 42 of the Constitution, the criminal code had (among others) the objective to protect society, the social, political, economic and state order. The labour code (Law 116) in its article 2 the fundamental labour rights principles, which

expressly prohibit discrimination in the work place based on skin colour, gender, religious beliefs, sexual orientation, territorial origin, disability, etc. Cuba was now engaged in drafting a multi-sectorial policy, in order to eliminate the vestiges of racial discrimination. He also noted national reform efforts aimed at reviewing policies and existing laws. Changes would, in particular, be introduced in the educational system and a programme on African origins might be introduced. Further efforts would focus on special education programmes directed at education and law enforcement on discriminatory practices, and diversifying the public debate. The delegate then referred to additional legislation prohibiting and preventing racial discrimination in Cuba, including national legislation that prohibits the promotion of ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, which attempt to justify or promote racial hatred and discrimination.

The representative of Mexico gave a summary of its national-level experiences, noting that Mexico rejected any form of discrimination and legislation prohibited all forms of discrimination, and that xenophobia was criminalized under that legislation. Mexico's federal act contained measures prohibiting discrimination and listed the grounds of discrimination. Mexico had also established a national council tasked with the prevention of discrimination. That body was also responsible for measures of affirmative action and for monitoring the implementation of such measures. In addition, it was called upon to mediate in racial discrimination cases. The representative recalled that those amendments to the criminal code being planned in her country, had been shared with the Committee during its seventh session.

The representative of the Bolivarian Republic of Venezuela noted that the Venezuelan constitution incorporated the principle of non-discrimination. In addition, the country had enacted a number of laws, including the law against racism that was implemented in 2011, dealing with discrimination on a wide range of grounds. Article 10 of the law contained a definition of xenophobia, as well as definitions of racial discrimination, ethnic origin, national origin, vulnerable groups, cultural diversity, racism and "endo-racism." In compliance with the law, the Bolivarian Republic of Venezuela created the National Institute against Racial Discrimination, following the guidance provided in the Durban Declaration and Programme of Action. The focus of Venezuelan legislation was to provide protection to social groups that were considered vulnerable, including people of African descent. Specific measures were contained in the 2013–2019 "Plan de la Patria" and the "Plan de Derechos Humanos" that were being implemented in the period 2015–2019. A number of laws were sector specific, focusing for example on the work force and corporate social responsibility law that providing penalties for television and radio broadcasters for any emission that incites hatred and intolerance for religious, political, gender, racist or xenophobic reasons, as well as any other form of discrimination. The law contemplates administrative sanctions for television broadcasters, radio stations and electronic media that commit these offences. The representative reaffirmed his country's support for the need to draft complementary standards to ICERD.

The representative of Japan stated that the constitution of the country stipulated that all people were equal under the law and there should be no discrimination based on political, economic or social status or family origin. Based on the constitution and relevant laws, Japan had been fighting various forms of discrimination and had been striving to realize a society without any form of racial or ethnic discrimination. Japan had hoped that the Committee would have future oriented discussions in order to come up with practical and effective measures against racism. According to Japan, official statistics reflected that the 2,282,822 foreigners from 190 countries living in Japan at the end of 2016, were being protected by anti-racism legislation.

Speaking in her national capacity, the representative of South Africa stated that the ICERD and the DDPA affirmed the necessity of eliminating racial discrimination throughout the world in all its forms and manifestations. The ultimate intention of all these efforts was to ensure the respect and dignity of the human person and to promote the observance of human rights for all persons regardless of race, sex, language or religion. Efforts towards the total elimination of racism, racial discrimination, xenophobia and related intolerance had a special significance for South Africa, given the country's tragic

history of injustice, dispossession and inequality. The representative further explained that apartheid affected each and every part of a person's life — where they were allowed to live, whom they could marry, who they could associate with, which government services, if any, they could access. Dismantling the edifice of apartheid involved much more than the repeal of apartheid legislation and its replacement with legislation based on equality and the rule of law. The achievement of substantive equality required a much more determined effort. It required not only political will, but also dedicated resources. It required building new institutions to support constitutional democracy. It required the progressive realization of socioeconomic rights for all our people. Policy formulation in this environment required the careful balancing of interests — with the goal of enhancing the dignity of all of our people whose everyday lived experiences still, in many ways, reflect the legacy of apartheid.

The work of the Government of South Africa was directed towards redressing the inequalities of the past, the representative said. The Constitution of South Africa formed the basis of the country's social compact. Through the constitution, the country sought to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

The majority of South African women, who were black, were the most oppressed section of the country's people, suffering under a triple yoke of race, gender and class oppression. The liberation of women was, and still remained, central to the struggle for freedom. South African women had come a long way in the struggle for recognition, promotion, protection and realisation of their rights. This struggle was part of the larger struggle against apartheid, the consequences of which are still felt today. Thus, the empowerment of women and the achievement of gender equality in South Africa also involved dealing with the legacy of apartheid and the transformation of society, particularly the transformation of power relations between women, men institutions and laws. It was about addressing gender oppression, patriarchy, sexism, ageism and structural oppression and the creation of an environment that is conducive to women taking control of their lives.

South Africa, the representative noted, had passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms. During the last 23 years of democracy more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were passed. South Africa was currently in the process of finalising the National Action Plan, in accordance with the Durban Declaration and Programme of Action. The NAP provided the basis for the development of a comprehensive policy framework against the scourges of racism, racial discrimination, xenophobia and related intolerance. Importantly, the development and actual implementation of programmes, measures and activities in respect of the NAP lied with all government departments, institutions supporting constitutional democracy, civil society as well as business, labour, the media and other sectors. The NAP would also provide South Africa with a comprehensive policy framework to address racism, racial discrimination, xenophobia and related intolerance at both a private and public level. It was not intended to replace existing laws and policies — rather it was complementary to existing Government legislation, policies and programmes which address equality, equity and discrimination. The overall goal of the NAP was to build a non-racial, non-sexist society based on the values of human dignity, equality and the advancement of human rights and freedom. The government had recently published the Prevention and Combating of Hate Crimes and Hate Speech Bill. Once it became law, it would criminalise several forms of discrimination including on the basis of race, gender, sexual orientation, religion and nationality. This Bill was an illustration of the seriousness with which South Africa viewed hate crimes.

The representative of the Plurinational State of Bolivia stated that the knowledge of history helped to prevent future intolerance. Racism, discrimination, xenophobia and Afrophobia are interconnected forms of intolerance and have its origin in the accumulated combination of process that have not yet subsided. The Plurinational State of Bolivia rejected any form of discrimination and the Bolivian Constitution, in particular in Article 14, prohibited all forms of discrimination based on sex, colour, origin, gender, sexual orientation, language, religion, ideology, political reasons, civil status, economic or social status, educational level, occupation etc. Bolivian anti-racism law defines xenophobia as

"hate or rejection of a foreigner, reaching from manifestations of rejection to different manifestations of aggression or even violence." The law was implemented by a Directorate for Anti-Racism, a public institution that had taken up its functions this year. The representative confirmed his country's commitment to the work of the Committee.

The representative of Brazil noted that racism was a crime according to the Brazilian Constitution. As in most countries, Brazil also had specific laws and provisions on crimes of racism and xenophobia, which punished those crimes. Brazil understood that combating racism and racial discrimination also required the direct action of the Brazilian State, in order to ensure equality. In 2010, Brazil adopted a Racial Equality Statute to ensure equal opportunities to the Afro-Brazilian population. The Statute provides that: "Besides the constitutional norms, related to the fundamental principles, to the fundamental rights and guarantees and social, economic and cultural rights, the Racial Equality Statute adopts as a political and legal guideline the inclusion of victims from ethnic-racial inequality, the appreciation of ethnic equality and strengthening of the Brazilian national identity. The participation of the afro Brazilian population in equal conditions of opportunity in the economic, social, political and cultural life of the country shall be promoted primarily through: I — inclusion in public policies of economic and social development; II — adoption of measures, programs and policies of affirmative action; III — changing of the institutional structures of the State for the adequate coping and overcoming of ethnic inequalities stemming from ethnic prejudice and discrimination; IV — promoting normative adjustments to improve the struggle against ethnic discrimination and ethnic inequality in all its individual, institutional and structural manifestations; V — removing historical, sociocultural and institutional barriers that obstruct the representation of ethnic diversity in public and private spheres; VI — encouraging, supporting and strengthening initiatives from civil society aiming to promote equal opportunities and fighting ethnic inequalities, including through the implementation of incentives and criteria for conditioning and priority in the access to public resources; VII — implementation of affirmative action programs aiming to cope with ethnic inequalities in terms of education, culture, sport and leisure, health, safety, work, housing, means of mass communication, public funding, access to land, justice, and others."

The representative of Jamaica stated that the country was a post-slavery society, and noted that a majority of the population was of mixed origin. As such, the Jamaican Constitution was naturally defined by a strong focus on anti-discrimination. Chapter 13 of the Constitution, spoke to the rights of all persons. She outlined from a national perspective what was required to address racial discrimination and underlined that investment in education was key to combatting discrimination. She also noted that there were many avenues for victims to redress discrimination, but very often, victims were not aware of their options. Education was therefore needed to supplement the laws; and that it was essential to focus on the implementation of the existing legal framework. The representative expressed that Jamaica had to further focus on the implementation of anti-discrimination legislation rather than embarking on creating new and costly laws.

A representative of the non-governmental organization Indian Council of South America noted his organization's struggle to support a "decolonization" of Alaska. The representative mentioned de-colonialization, and asked about a United Nations body that would consider this cause. He mentioned this as proof of a gap in the current international legal framework that was linked to racism, as he believed that the colonialization of Alaska was based on racist beliefs.

Before the end of the meeting the Chair-Rapporteur reiterated the reasons for the existence of the Committee, referred to the genesis of the body and spoke about its mandate. He noted that the General Assembly had now issued new instructions to the Committee in resolution A/RES/71/181 that requested the Committee to commence negotiations on the draft additional protocol "criminalizing acts of a racist and xenophobic nature."

Protection of migrants against racist, discriminatory and xenophobic practices

At the 4th meeting on 25 April, the Ad Hoc Committee considered agenda item 5. E. Tendayi Achiume from the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at the African Centre for Migration and

Society, University of Witwatersrand, South Africa, and Ibrahima Kane from the Open Society Initiative for Eastern Africa, presented on this topic.

Ms. Achiume gave a presentation entitled "Protection of Migrants against Racist, Discriminatory and Xenophobia Practices — An International Human Rights Approach: Limitations and Possibilities". She distinguished between the concerns and vulnerabilities of voluntary migrants and involuntary migrants, as well as migrants and refugees, and protection regimes for these groups. She cautioned against too siloed an approach in the protection of these groups, as perpetrators of xenophobic discrimination and violence did not distinguish between refugees and other migrants. Ms. Achiume described the phenomenon of xenophobia as "illegitimate anti-foreigner acts or attitudes", and further elaborated that xenophobia was compounded by foreignness (on account of their nationality or national origin) and other intersectional social categories including race, ethnicity, religion, class and gender. She added that racism and xenophobia were overlapping when race is often an explicit or implicit basis for xenophobic discrimination and anxiety. At the same time, she stated that there existed a distinction between the two when race is not always salient in the construction of foreignness where migrants are concerned, including when non-citizenship can amplify the negative impact of racism, and addressing racism alone may not appropriately address the circumstances of non-citizens experiencing racial discrimination.

Ms. Achiume stated that there was an absence of a clear answer in international human rights law as to when anti-foreigner attitudes and actions become xenophobic. She pointed out that while ICERD provided an important framework for addressing xenophobic discrimination, it has a number of significant shortcomings that limit its capacity fully to protect migrants (especially involuntary migrants) from xenophobic harm. She pointed out the ambiguity in Article 1 of ICERD about the extent and scope of its prohibition of xenophobic discrimination, the contested legal status of CERD General Recommendations, and the gap in terms of the status of religious discrimination against migrants. She provided a number of examples aimed at criminalizing acts of a racist and xenophobic nature such as the Additional Protocol to the Convention on Cybercrime Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems. Ms. Achiume recommended for the elaboration of global anti-xenophobia norms by clarifying the bounds of prohibited manifestations of xenophobia, and to account for non-criminal intervention; pursue a human rights-based approach that views social cohesion and integration as vital for combatting xenophobia, and to pursue a coordinated approach that situates ICERD elaboration within broader reform efforts tied to the international regulation of migration, such as the Global Compacts on Migrants and Refugees.

Mr. Kane from the Open Society Initiative for Eastern Africa, presented an analysis of the migration and refugee situation in Africa, with a focus on Southern Africa. He pointed out that intraregional emigration in Sub-Saharan Africa is the largest south-south movement of people in the world. Southern Africa has a long history of intra-regional migration even before the drawing of colonial boundaries, with male labour migration to the mines and commercial farms and plantations. Mr. Kane highlighted a number of factors attributing to migration in the Southern region, including governance deficit, growing inequality and poverty; the historical legacy and consequences in the nature of state-formation and social pluralism, including Apartheid, and conflicts in the region; gender inequality exacerbated by gender based violence, and the inadequacy and poorly funded institutional mechanisms and capacity for conflict resolution and management at the regional level. He emphasized that there was a pressing need to implement the migration policy at the AU level, including through the adoption of the proposed AU Protocol on the free movement of persons in Africa and Protocol to the African Charter on Human and Peoples' Rights on the right to a nationality in Africa along with regional dialogue on the issue of migration, and the need to harmonize labour migration policy and data collection.

During the interactive discussion, the representative of the European Union shared its measures to combat racism and xenophobia, including its action plan on building inclusive societies, and legislation to criminalize hate speech. The representative of Mexico shared its concerns about the vulnerability faced by migrants and stated that education initiatives were important to combat xenophobia, as undertaken by its National Council to

Combat Discrimination, through specific campaigns to promote and protect rights of migrants. The representative of the Plurinational State of Bolivia asked about the extent of conceptual and legal understanding in terms of setting up systems to eradicate xenophobic acts in international transit. The representative of South Africa highlighted its own history of South Africans having been refugees in their own region and the historical movement of its people, and asked a question whether the tendency to invoke sovereignty when it comes to managing migrants was specific to Southern Africa as a region or if there were differences in policies among the different countries in the region.

The representative of Pakistan asked the panellists on its opinion regarding preferred processes to deal with xenophobia and the rights of migrants and whether the ICERD through its General Recommendations and the ongoing work of the Committee (through the development of an Optional Protocol) or the Global Compact process provided better ways to address the problem. The representative of Jamaica asked the panellists for their view on the issue of consular assistance and the Vienna Convention on consular relations pertaining to addressing situation when people come into conflict with the law in foreign countries, and the possibility to address the real or perceived xenophobia faced by migrants in such situations. The Chair-Rapporteur asked the panellists if there was any justification for the non-ratification of the Migrant Workers Convention in Southern Africa, and asked Ms. Achiume, whether the non-reference of racism in ICERD could be seen as a gap.

Mr. Kane in response said that Southern Africa had a significant experience on migration due to the historical legacy of apartheid. In his opinion, South Africa should play a leading role in promoting the implementation of the SADC protocol on the movement of persons. Ms. Achiume responded that on the issue of transit countries and borders, extra-territorialization of borders resulted on gross human rights violations. She added that borders allow for the exercise of heightened discretion on the admission of non-nationals. As such, she suggested that it was essential in such situations additional clarity in the extent exercise of discretion was required in treating incoming migrants. With regards to racial discrimination, while ICERD was a touchstone to address racial discrimination worldwide, the Convention is focused on biological determinants of race and as such there are gaps in it to address racism as an evolving social construct and cultural markers, including gaps in addressing xenophobic discrimination. She added that it was essential that there was more clarity required within ICERD framework to address xenophobia and cannot therefore be outsourced to the Global Compacts on migrants and refugees. Moves to criminalize a xenophobic act should necessitate a comprehensive understanding on ICERD, she added. Ms. Achiume further emphasized the importance of national action plans to combat racism and criminalization of xenophobia for a comprehensive and harmonized human rights response.

On 26 April, at its 5th meeting, the Ad Hoc Committee continued its consideration of agenda item 5. Peggy Hicks, Director of the Thematic Engagement, Special Procedures and Right to Development Division, OHCHR, and Kristina Touzenis from the International Organization for Migration, gave presentations on this topic.

Ms. Hicks noted that migration is a universal phenomenon — migrants can be found in practically all countries. Migration can be a positive and empowering experience for many migrants. Yet, too often migrant women, men, boys and girls find themselves in a precarious situation. She noted that increasingly, restrictive measures are being taken across the world that prevent migrants from accessing their rights. Migration is further the subject of intense debate in the media, in political circles and in public discussions. The public narrative on migration is deeply polarised as a result of the many myths, misunderstandings and even falsehoods that have taken the place of facts and evidence in the debate.

Ms. Hicks noted that three issues are of particular significance:

The language that is used and how the narrative on migration and migrants is framed: Terminology plays an important role in shaping the migration narrative and inciting hatred against migrants. Terminology has long been used to distance migrants and their communities from the mainstream, to marginalize and stigmatize them as the unknown 'Other', or even to dehumanise migrants. She notably mentioned terms such as 'illegal',

'economic migrant', or 'bogus asylum seekers' to be particularly harmful. She noted that OHCHR's challenge is how to frame narratives on migrants and migration that are based on evidence and principles, but resonate with a broader public.

Lack of data and evidence: In the migration context, data gaps are more glaring than in other areas as migrants and, in particular irregular migrants, often are not reached by data collection methods. Yet, that glaring absence of data characterises much of the debate and indeed policy-making on migration. A critical lack of data collection on the rights of migrants often conceals exclusion and makes it difficult to dismantle patterns of discrimination.

Criminalization of migrants and discriminatory practices: Public policies that criminalize irregular migration and those who provide services to migrants stigmatize, marginalize and exclude migrants and their communities and put them at further risk of abuse and exploitation by leaving them without protection, support and assistance.

Ms. Hicks addressed the issue of international law and the protection of migrants. She noted that migrants are protected by all United Nations human rights treaties, including the ICERD, and that States are required to respect, protect and fulfil the human rights of all migrants, regardless of their status and without discrimination. In September 2016, Member States reaffirmed and committed to fully protect the human rights of all migrants, regardless of their migratory status (New York Declaration, Annex II, 8i). They further condemned acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against migrants, and the stereotypes often applied to them (New York Declaration, para. 14).

Migrants are protected by human rights norms and standards from discrimination or racism. However, the international community continues to struggle with inadequate implementation of these legal norms. States are therefore called upon to implement measures that range from strengthening law enforcement and criminal justice responses, putting in place accessible complaints mechanisms in order to ensure access to justice for victims, collecting better data on racist crimes, and developing awareness raising initiatives which focus on inclusiveness, diversity and human rights. Concretely, States are called upon to promulgate robust anti-discrimination and equality legislation that protect migrants from all forms of discrimination including on grounds of nationality or migrant status, establish national specialized bodies in this respect, and develop benchmarks for the elimination of xenophobia against migrants. They should provide accessible legal, medical, psychological and social assistance to migrants affected by racism, xenophobia and discrimination. Integration and anti-discrimination policies should be developed through the participation of migrants and other relevant stakeholders.

States should develop and implement clear and binding procedures and standards on the establishment of "firewalls" between immigration enforcement and public services at all levels, in the fields of access to justice, housing, health care, education, social protection and social and labour services for migrants. In the context of racism and xenophobia, this means that migrants, independently of their status need to have access to mechanisms to challenge racist and discriminatory acts and bring perpetrators to justice.

Partnerships should be established with political leaders and parties, media, private sector, local communities, trade unions and other public actors, to promote tolerance, and respect for all migrants, regardless of their status. Other responses could include public education measures, child rights education programs and education curricula, and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants. OHCHR has developed a number of tools, which contain the aforementioned practical guidance to States and other stakeholders.

Under the Global Compact on Safe, Orderly and Regular Migration, States have acknowledged a shared responsibility to govern large-scale movements in a humane, sensitive, compassionate and people-centred manner, recalling their obligations to fully protect the human rights of all refugees and migrants as rights-holders, regardless of their status. The main challenge was to translate the aspirational words of the Summit and the New York Declaration into a concrete plan of action. The proposed global compact on safe migration could provide that concrete plan.

In conclusion, Ms. Hicks state that OHCHR has taken note of the recent General Assembly resolution 71/181 and Human Rights Council resolution 34/36 that called upon the Committee to "ensure the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature during [its] tenth session". She added that OHCHR looks forward to more pragmatic progress during the current session, so as to provide guidance on ways to address racism, racial discrimination, xenophobia and related intolerance more effectively.

Ms. Touzenis, International Organization for Migration, presented on migrants' rights and on policy efforts to address migration. She started by emphasizing that migrants have the same rights as nationals. Rights are in no way reserved exclusively for nationals. Though this important fact may be obvious for people dealing with human rights, there are countries were part of the population would distinguish between nationals who have rights and migrants who do not deserve any rights. It is essential to communicate with those populations, governments as well as politicians (as they often use migrants as scapegoats), in order to inform them that the targeting of groups is unlawful.

She emphasized that communication is indeed a key factor in framing policies on migration. She noted that the discourse that focuses on discrimination of the 'Other' needs to be turned into a more positive discourse. One could achieve that goal by combining a number of approaches, one of them being the adoption of new law. Such new law is, however, hard to obtain. The international legal human rights framework already covers the subject of racism and xenophobia, but guiding principles to facilitate the implementation of these international laws in the context of migration could be useful. Guidelines could notably spell out how migrants' human rights should be implemented.

She noted that the issue of hate speech has often been topical, but that focusing on hate speech could be slightly misleading as discrimination is often more subtle. As an example, she referred to the term "illegal migrant" and noted that a person could never be illegal. Such commonly used terminology would not fall under hate speech but is still based on the assumption that migrants might not enjoy the same amount of rights as a national of a country. That wrong assumption, which seems to prevail in the area of migration, is never used when describing other groups, such as women.

In order to rectify the situation, the expert recommended implementation of the existing legal framework as a key priority. Implementation should not only concern the national level, but also encompass the local level. Municipalities are a key player as they are often responsible for integrating migrants. They should therefore be consulted when framing a policy response to migration. Municipalities often have experiences that constitute good practices and that could serve as models for counteracting hateful acts. Other important stakeholders that could participate in the framing of a policy response and in implementing existing laws include the judiciary, which needs to be empowered to this purpose, and civil society, which is an important partner when it comes to raising awareness through campaigns.

The expert also pointed out that good migration policies would support the rights of the individual and would establish long term migration goals. The current international legal framework is a good basis for improving or redrafting such policies. The existing legal framework also provides for addressing hate speech and xenophobia. The issue of implementation, however, would need further concerted efforts. The expert mentioned that IOM is already putting considerable efforts behind this goal and aims at facilitating implementation of sound migration policies by including a human rights based approach in all of its policies.

The Chair-Rapporteur underlined some of the points made by the presenters including the importance of seriously addressing hate speech; the fact that denying human rights to some human beings — be they migrants — actually impacts on the human rights of all; the importance of terminologies and of referring to migrants in non-pejorative terms; as well as the importance of legal channels for migration. He also noted that an international legal framework on migration and the need for guidance on how to implement international human rights law are important. He opened the floor to discussions and comments.

The representative of South Africa noted that the two presenters had focused their presentations on the receiving states, rather than on the sending states. She asked if the economic, political and social state of the sending state should also be considered in order to frame policy recommendations.

Ms. Touzenis responded that it is indeed very important to also analyse the drivers of migration in the countries of origin. The reasons for migration are diverse, combining a variety of economic, social and political factors. She stressed that, in her view, the terminology 'economic migrant' is harmful because it suggests that migrants come to 'steal our jobs' and undermines the fact that migration also has a positive impact for receiving economies. Addressing those factors in sending countries is a complex issue because it concerns different policy fields and social problems, such as development, corruption, the political situation, as well as other issues, in the country. Countries of origin are of importance because of the necessity to inform migrants about their rights prior to embarking on their journey. She notably referred to the work done by IOM in providing pre-departure information and training to potential migrants. She also added that, in terms of numbers, the flows of migrants and refugees are not so big.

Ms. Hicks agreed that it is important to analyse the various factors that encourage migration; as racism could be such a factor, as well as the economic situation. She stressed that it is important to base policy efforts on a holistic picture that is also informed by the right to development.

The representative of the European Union underlined the importance of taking into account the risk of 'history repeating itself' raised by one of the presenters. She noted that, despite its strong anti-discrimination legal and policy framework, the European Union was yet to find a response to the issues raised by the construction of this idea of the 'other'. She noted that there is a strong international framework that covers migration. ILO conventions on migrant workers cover, for example, the issue of migration and workers' rights. She further voiced her agreement that implementation of human rights law is essential. She asked if the Global Compact would be the venue to develop policy guidelines for migrants.

Ms. Touzenis responded and noted that the negotiation of the Global Compact on Migration could be the venue to discuss migrants' rights. Even though it is momentarily unclear what shape the document would eventually take, the goal of integrating a human rights approach into the document is already a clear goal that one could follow up on. Ms. Hicks agreed that the legal framework on migration has gaps, for instance concerning the detention of children, while the human rights framework is already providing sufficient clarity but lacks — in many cases — implementation. Ms. Hicks mentioned that the Global Compact on Migration is one of the avenues where some of these gaps could be addressed.

The representative of Pakistan, speaking on behalf of OIC, highlighted the importance of narrative building with regards to racial discrimination against migrants and refugees in receiving societies and, thus, the importance for the Ad Hoc Committee to address the issue of hate speech, which could also take the form of xenophobic and Islamophobic speech. In this respect, he noted that States need to find a balance between preserving the freedom of speech and limitations on hate speech.

Ms. Touzenis noted that the tension between freedom of expression and hate speech is an important issue and courts have already expressed their opinions on that issue. Those judicial statements provide guidance on how to approach the subject. The expert notably referred to the European Court of Human Rights, which had heard interesting cases on the limitations of freedom of expression. She noted that freedom of expression is indeed a fundamental human right but could be limited when it impinges on other fundamental human rights. Ms. Hicks stressed the need to prevent hate speech and, at the same time, to not infringe on freedom of expression, and outlined some recent progress made on this issue.

The expert, Ibrahima Kane, Open Society Institute for Eastern Africa, noted that legal proceedings might not be an ideal way to implement migrants' rights. An alternative approach that he supports would be to use statistical data to point to the positive effects of migration. He noted that, for example, a South African initiative is using data that show that migration has a positive economic effect. Such data has the potential to change the

perception of migrants. Ms. Hicks and Ms. Touzenis agreed that the use of data to provide a different narrative about the positive effects of migration is a very useful approach. However, it should be complementary, and not replace, legal proceedings, including the criminalization of certain acts, in order to prevent impunity for such acts.

The representative of the Plurinational State of Bolivia referred to seasonal migratory patterns of indigenous people in his country and raised concerns on the compatibility of complementary standards with national legal frameworks.

The representative of Brazil asked Ms. Touzenis to develop her point on the fact that not criminalizing certain acts, especially of racism and xenophobia, grants impunity for these acts, and to link it to the mandate of the Ad Hoc Committee, notably in light of the latest Human Rights Council resolution 34/36.

Ms. Touzenis responded that, though she may not be in the position to reflect on the mandate of the Committee, she considers that not taking acts that are motivated by racism or xenophobia sufficiently seriously from a legal perspective would send the signal that such criminal acts are not so serious. In many national legal systems, the certain motivations to commit criminal acts, notably xenophobic and racism motivations are considered aggravated circumstances.

The representative of Tunisia outlined her country's approach to the implementation of the right to development and the positive impacts it can have on both countries of origin and receiving countries. She stressed that migrants are people who have something to bring to the host country and can contribute positively to their economic prosperity. She noted that, though the right to development is implemented in developed countries, this is not the case in under-developed and developing countries. In this light, she asked whether preventing migrants from the opportunity to move would not exclude them from the right to development.

Ms. Hicks welcomed the comment by the representative of Tunisia, stressing that the advancement of the right to development, as well as social and economic rights are part of OHCHR's work and would certainly help addressing migration in a more successful way, which includes developing legal channels for migration and dealing with illegal migration in a more humane manner.

Protection of refugees, returnees and internally displaced persons against racism and anti-discriminatory practices

On 26 April, at its 6th meeting, the Ad Hoc Committee considered agenda item 6 on "Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices". Ms. Cecilia Bailliet, Professor and Director of the Masters Programme in public international Law at the University of Oslo and Ms. Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of the International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), gave presentations on this topic.

Cecilia Bailliet, Professor and Director of the Masters Programme in public international Law at the University of Oslo stated that the issue of protection of refugees, returnees, and internally displaced persons against racism and discriminatory practices is one of the most compelling challenges of contemporary times. Many persons are fleeing state failure, armed conflict, terrorism, insecurity, natural disasters, famine, and other situations which do not fit neatly into the 1951 Convention on the Status of Refugees, and hence complicate recognition of the legitimacy of their protection claims and related rights, although they may be covered by regional refugee and IDP instruments, such as the OAU Convention on Refugees and the Kampala Convention on IDPs.

In spite of the fact that the majority of displaced persons remain in the South, there has been a significant increase in discriminatory attitudes across the world against those forced to flee. There is a correlation between fear of terrorism and crime and discriminatory attitudes including religious stereotyping, racial discrimination, fear of non-assimilation (different values), concern about competition for scarce jobs and social benefits, etc. This

context may be juxtaposed against the statistic that only 1% of refugees are resettled from the South to the North.

In addition, States are currently strengthening mechanisms to prevent the physical entry of asylum seekers, ranging from construction of fences and walls, to legal requirements based on nationality, such as visas, and other tactics to deny legal presence or stay. Asylum seekers are regularly treated as irregular migrants and denied protection when undergoing processing. The trend is to support containment or speedy deportation, at times in the form of disguised collective expulsion.

In comparison, she quoted that "in most of Africa these days, refugees are not welcomed with the exuberant sense of solidarity that surrounded the promulgation of the OAU Convention. Instead, African states are increasingly following the lead of other regions by closing their borders and threatening to forcibly return those who have made it into their territories. Even in those countries where refugees are readily admitted and positive policies towards them are in force, their treatment is not always in keeping with the Convention. Previously such treatment was by states alone but today it is also the treatment by the general public that is the concern as hosting communities have become increasingly hostile to the refugees."[1]

Ms. Bailliet presented a brief overview of the three scenarios faced by refugees and IDPs (namely protracted camps, urbanization, and detention) outlining the range of human rights violations and accountability gaps, arguing that these are examples of structural racism. She discussed normative gaps within international law, the role of compliance mechanisms, and the risk of inaction in the face of discrimination against refugees, using the case study of Norway, and discussed the way forward in the form of a new Protocol to the CERD.

First, she explained that the warehousing of refugees and IDPs in camps which commenced in the 1980's had now resulted in protracted containment in camps located in Kenya, Jordan, South Sudan, the United Republic of Tanzania, Ethiopia, Pakistan or off-shore locations such as Nauru. Refugees and IDPs are isolated from host communities and sentenced to a "forever temporary" existence, describing themselves as "children of UNHCR" and thus effectively stateless.

Refugees and IDPs were subject to many violations, including lack of access to food or clean water, denial of the right to work or study, exposure to diseases, sexual violence, etc. Collaboration between UN system agencies and NGOs as implementing partners or operational partners to run hospitals schools, provide water, sanitation, etc. can result in accountability gaps which prompt impunity in cases of corruption, negligence, denial of food, sexual exploitation, and physical violence. The camps are parallel states within states, where neither national law nor international law prevails. There are accusations of a lack of investigation, prosecution, or punishment for state and non-state actors responsible for violations. Refugees and IDPs lack mechanisms for redress and accountability, and there is no transparency in the processing of their cases or of their enjoyment of rights, thereby indicating grounds for structural racism. There is a need to articulate the legal obligations of the host state, International Organizations, and NGOs, as well as create a compliance mechanism to conduct visits and write reports.

Second, many refugees and IDPs were not in camps, but instead rendered invisible within large cities, where they work in the informal market and have little follow up by the State or UNHCR, although there are some programs available, they are limited. Urbanized refugees lack documentation and therefore may be excluded from education or suffer exploitation at work or in access to housing. They are often discriminated against and suffer fear of deportation.

Third, Refugees in Western countries are often placed in detention or reception centres which may be very isolated from host societies. There is often little transparency regarding the conditions in the centres or the processing of cases. Asylum seekers may be

[1] J O Moses Okello.

denied legal aid (often legal information is given instead), they may be subject to accelerated procedures, non-suspension of deportation, age testing — including bone tests, dental examination, language testing, restrictions on family reunification, isolation, and excessive delays, this results in depression, humiliation, self-harm, suicide, etc. There is use of corporate actors to run detention centre creating clear accountability concerns. One of the problems regarding enjoyment of rights, she argued, is the lack of clarity regarding the normative regime which applies.

She addressed the issue of normative gaps within international law, stating that the 1951 Convention on the Status of Refugees provides a hierarchical framework for the enjoyment of rights which divides along the categories of jurisdictional control, physical presence, lawful presence, lawful stay, and habitual residence. Rights are granted in reference to three different groups — aliens in the same circumstances, most-favoured foreigners, and citizens. She explained that this framework is itself discriminatory and may further inequality in contradiction of Article 26 of the ICCPR.[2] Further, many asylum seekers are denied recognition as refugees, and instead given humanitarian protection which results in reduced enjoyment of rights.

Discrimination against refugees prevails in part because of the structures within national immigration systems, normative and institutional, as well as regional initiatives (such as the European Union Turkey Agreement, or even the Dublin Regime). She added that regarding IDPs, the UN Guiding Principles is soft law and lacks centralized compliance mechanism.

She addressed the role of the Treaty Bodies, ECTHR, UNHCR, IACTHR IACommHR, African Commission, and Constitutional Courts regarding Follow up of Refugees and IDPs. The Treaty Bodies have issued General Comments confirming the rights of refugees to enjoy protection of the treaties. The Treaty bodies set forth that distinctions must be based on a "reasonable and objective" standard — consistent application, not arbitrary, in pursuit of legitimate aim. This is similar to the European Union Test for Distinction which assesses whether distinction pursues an objective and reasonable justification, furthers a legitimate objective, regard for principles of a democratic society, and use of reasonable and proportionate means to the end sought.

However, the European Court of Human Rights accepts protection of country's economic system as a legitimate aim for treating aliens differently from nationals and the need to reverse illegal immigration as a legitimate aim for distinguishing between nationals and aliens in public benefits.

Treaty Bodies identify many of the most pressing human rights violations affecting refugees and IDPs, however, quite often the State is advised to consult with UNHCR, which can be problematic for a number of reasons including financial, legal and operational. There is a need for an independent actor to review compliance of States with human rights obligations pertaining to refugees and IDPs.

She emphasized the importance of taking concrete action to address discrimination against refugees, citing the concluding observations of CERD to Norway in 2011 which identified the risk of hostile acts linked to racism prevalent in the media and among political actors. On 22 July 2011, the mass killings occurred in Oslo and on the island of Utøya. In response, Norwegians gathered for a rose ceremony in the capitol where they claimed allegiance to the values of democracy, openness, and humanity. However, by 2015, CERD had once again to express continued concern about hate speech. Norway had also undertaken a series of legislative reforms which had negatively impacted refugees including the removal of independence of the Immigration Appeals Board, now subject to instruction by the Ministry of Justice; a significant increase of hiring of immigration police to facilitate deportation, a marked decrease in asylum appeals, in part based on substantial increase in deportations — 3,400 less appeals, the hiring of extra case workers to process an expected influx of asylum seekers which never arrived resulted in reassignment of caseworkers to screen persons granted citizenship for grounds for cancellation going back 20 years in order

[2] Marina Sharpe.

to withdraw citizenship, restrictions on family reunification, ongoing discrimination regarding access to housing, education, workplace, etc., weakening of the ombudsman addressing discrimination cases, and continued use of detention, including children, solitary confinement. These developments, in the expert view, underscored the urgency to take action to ensure that equality and non-discrimination are lifted so that States can correct policies and legislation which run contrary to these principles.

Ms. Bailliet stated that there is arguably a need for a new protocol to CERD addressing discrimination against refugees and IDPs. She suggested that this instrument would receive political attention and should be promoted at the highest level by the UN Secretary General. It should include a compliance mechanism, either following the Optional Protocol to the CAT which set forth a Sub-Committee and national mechanism or the Disabilities Convention, which relies on national monitoring, or the European Union Rapporteur on Racism, which conducts visits and writes reports. She added that although creating a CERD General Recommendation or a UNHCR Guidance Note might be considered; it may prove a helpful source for legal cases, but would be unlikely to prompt a political response.

She added that there is a need to review the recent reforms in legislation, regulations, and directives addressing terrorism, immigration, deportation, and citizenship, as the changes may have discriminatory impact on refugees, returnees, and IDPs.

Further, it would be beneficial to publish best practices reports to review positive jurisprudence from national courts, including constitutional courts, to map case law addressing discrimination against refugees, returnees, and IDPs. This would also help to identify and articulate adequate and effective remedies to address structural discrimination affecting refugees. She added that lawyers needed to be engaged to address procedural and substantive violations in refugee cases, and that outreach to national ombudsperson offices, law associations, pro bono firms, law schools, etc. to bring cases addressing discrimination against refugees, returnees, and IDPs should be pursued. There was also a need to strengthen the demand upon to States to make legal aid to made available (not just legal information) to refugees.

Ms. Bailliet emphasized the importance of outlining the procedural rights of asylum seekers and refugees, as this is the primary vehicle for excluding them from enjoyment of equality and non-discrimination. These rights must be made secure in a normative instrument. The core aim should be centred upon CERD's statement on the Occasion of the UN Summit on Refugees and Migrants in August 2016.

In response to Ms. Bailliet's presentation, the representative of the European Union requested clarification on whether the mechanism suggested would be similar to the Optional Protocol to the Convention against Torture, and inquired about the role of special procedures. Ms. Bailliet explained that the mechanism she suggested would be similar to the OPCAT model, combining international level and national level ombudspersons, and contemplated the national roles and national-level involvement. She suggested the creation of a best practice map to determine the coverage in terms of case law and standards. A compliance review of national laws that are being adopted in the current environment, including good examples, should take place.

Ms. Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of the International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), recalled that, as of mid-2016, an estimated 61.5 million persons were forcibly displaced around the world, including approximately 21 million refugees and 37 million internally displaced people, as well as asylum seekers, returnees and others falling under UNHCR's mandate. These numbers are among the highest in recent years in some regions and countries. Asylum and migratory pressures that some States were facing were having a significant impact upon the public discourse as well as political debate and actions. This is noteworthy in several European countries, although the numbers of forcibly displaced people in Europe, in absolute and relative terms, are a fraction of those hosted by other less well-resourced regions of the world. Close to 90% of the global refugee population is hosted in middle and low-income countries.

Increasing concerns in some countries about security and integration capacity can exacerbate racism and xenophobia, thus worsening the already precarious situations of those forced to flee. The proliferation of xenophobic narratives, hate speech and inflammatory statements directed against refugees and migrants has been reported lately. Not only has this threatened to undermine the institution of asylum, but also at times has even led to violence against refugees and migrants.

She stressed that UNHCR has a special interest in and commitment to reducing racism and xenophobia, stemming from the fact that racism, related intolerance and xenophobia are common causes of forced displacement, but can also compromise the protection afforded to asylum seekers and refugees at different stages of the displacement cycle. For instance, they can be manifested through official restrictions on access to asylum or inadequate standards of treatment afforded to those seeking asylum or recognised as refugees. Asylum seekers and refugees may be denied the full enjoyment of human rights in the host country, such as equal access to public services. This can hamper the achievement of durable solutions, by hindering integration in the receiving societies. Furthermore, voluntary return by refugees to their countries of origin is a less viable and sustainable option if it takes place in conditions where peace is fragile and ethnic, religious or other forms of discrimination persist.

She recalled that discrimination on the basis of race, colour, descent, or national or ethnic, origin, among others grounds, is also a reason for the denial or deprivation of nationality, and is therefore a cause of statelessness in many cases. The majority of the world's estimated 10 million stateless people belong to minority groups. At least 20 countries maintain laws which deny or permit the withdrawal of nationality on the grounds of ethnicity, race, or origin. As the organization mandated by the UN General Assembly, together with States, to identify and protect the rights of stateless people, and prevent and reduce statelessness around the world, UNHCR saw a pressing need for greater acknowledgement and action to address discrimination where it leads to the injustice and hardship of statelessness.

She stated that UNHCR welcomed the opportunity to take part in the session, and to speak with the members of the Ad Hoc Committee about the legal and practical tools at our disposal to address the manifold challenges associated with racism and xenophobia in many contexts today. The principle of non-discrimination is articulated in the 1951 Convention Relating to the Status of Refugees, which in its Article 3 binds States Parties to apply its provisions without discrimination as to race, religion or country of origin. Subsequent multilateral instruments — including notably the International Convention on the Elimination of Racial Discrimination (ICERD) — elaborated and developed further in crucial ways the content of this principle and the specific obligations of states to refrain from and prevent discrimination, including where it affects asylum seekers, refugees, stateless persons and others under UNHCR's mandate.

In UNHCR's view, the standards which exist in international law at present provide a solid framework for protection against discrimination in its many forms today. The challenge, in UNHCR's view, is to ensure more effective observance of these standards in practice. This can be done, among other ways through training and ensuring accountability of state officials and organs; through processes for enforcing anti-discrimination rules; and through initiatives to foster tolerance and inclusiveness, as well as countering racist and discriminatory attitudes, rhetoric and actions. She elaborated on a number of tools and elements that can contribute to these goals in the following points of her presentation.

She addressed the question of how to tackle the particular vulnerability of refugees and asylum seekers to racist and xenophobic attitudes. She noted that many manifestations of racism and xenophobia are not directed against asylum seekers or refugees per se, but against non-nationals more broadly. However, refugees, asylum seekers and members of minorities may be particularly vulnerable to the effects of discrimination due to a less secure legal status or the absence of a supportive network in society. Some extremist political parties, movements and groups may also explicitly incite discrimination against new arrivals, by unjustifiably blaming them for wider social problems.

Refugees, asylum seekers, stateless and internally displaced persons, due to their specific protection needs and vulnerabilities, can suffer multiple form of discrimination, and may become victims of rejection, stigmatization, exclusion, or event violent attacks. Many children report little positive contact with host communities in their countries of asylum, but rather negative experience of xenophobia, racism and discrimination. There is evidence that such experience, coupled with other hardships of forced displacement, can increase young refugees' vulnerability to recruitment by or victimization at the hand of gangs, other criminal groups and radical extremists.

She explained that, institutionally, the protective role of the ICERD is more critical than ever in addressing elimination of racial discrimination, promoting understanding, outlawing hate speech, and criminalizing membership in racist organizations. Parties to the ICERD are obliged to review and amend their laws and policies to ensure that they do not discriminate on the basis of race, and to guarantee the right of everyone to equality before the law regardless of race, colour, or national or ethnic origin, Additionally, the Committee's General Recommendation No. 30 provides guidance to States where it elaborates in particular on the relevance of the ICERD for non-citizens.

She noted that States can nevertheless do more to act in the spirit of the ICERD and the Durban Declaration. Global refugee numbers, and the higher number of arrivals in numerous individual countries worldwide, have underscored the need for States to develop efficient and effective, longer-term multi-stakeholder strategies and programmes which truly facilitate refugees' inclusion and self-sustainability. The Durban Declaration and Programme of Action and the Outcome Document urge States to develop national action plans, to monitor their implementation in consultation with relevant stakeholders and to establish national programmes that facilitate the access of all, without discrimination, to basic social services. The Outcome Document also recommends that States establish mechanisms to collect, analyse and disseminate reliable and disaggregated statistical data and that they set up independent bodies to receive complaints from victims.

She argued that more can be done effectively and comprehensively to train law enforcement, immigration, and border officials. Such training should aim to sensitize them to racism, racial discrimination, xenophobia and related intolerance, but also make clear their legal obligations to take or refrain from taking certain actions, as agents of the State. Greater concerted action is needed to counter xenophobic attitudes and negative stereotypes directed against non-citizens by politicians, law enforcement, immigration officials, and the media, and grant refugees non-discriminatory access to services.

She informed that in March 2016, together with the OECD, UNHCR organised a high-level meeting on integration, in order to counter myths and use research evidence to demonstrate how refugees can benefit economies, as well as to make the case for early investment in refugees' integration and social inclusion.

Greater efforts are required from all concerned parties — States, the UN and other international and regional organization, as well as NGOs and community groups — to address these challenges. The success of any such effort will directly proportional to the political will of States to put in place systems for the protection of basic rights and mechanisms for ensuring their effective implementation. This needs to be complemented by activities aimed at preventing racist and intolerant attitudes from developing, such as human rights education and public information campaigns to promote respect and tolerance.

UNHCR can provide support to partners in initiating public awareness campaigns in host communities in order to promote tolerance, and combat racism and xenophobia. Information strategies targeted at sensitizing host communities may include projects to better inform communities about the root causes of mixed movements and the human suffering involved. She also noted that UNHCR launched awareness-raising campaigns to "roll back xenophobia; "the Diversity initiative" in Ukraine; as well as Joint IPU-UNHCR handbooks for parliamentarians on "Human Rights" (2016); "Migration, human rights and governance" (2015), "Nationality and Statelessness" (2014) and "Refugee Protection: A Guide to International Refugee Law" (2001) — soon to be issued in an updated edition — as well as the IPU Resolution on "Migrant Workers, People Trafficking, Xenophobia and Human Rights" (2008). UN has also launched the "TOGETHER" global initiative, that

promotes respect, safety and dignity for everyone forced to flee their homes in search of a better life.

She emphasized that real partnership with persons of concern to UNHCR and their communities is essential in addressing racism, xenophobia and intolerance. This, after all, is about their experiences and their lives, and that they needed to be engaged in all stages, from development of any strategic approach for a particular national or local context, through its implementation. The most effective way to eradicate fear of 'the other' is typically through personal encounters and interaction.

The unanimous adoption of the New York Declaration for Refugees and Migrants by UN members States last September was a clear acknowledgement of this imperative. The Global Compact on Refugees envisaged in the Declaration aimed to ensure equitable and predictable responsibility-sharing arrangements to address both large-scale movements of refugees and protracted refugee situations. The principle of international cooperation, which is key to ensure global stability, building public confidence in our institutions, and bolstering refugee protection, will lie at its core.

In reaction to Ms. Garlick's presentation, the Chair-Rapporteur asked about the refugee status situation in Zimbabwe and the onward movement of refugees to other countries in the SADC region, to which Ms. Garlick explained that the fact that refugees moved on again to other countries did not necessarily mean that they were not in fact, refugees. She reiterated the need for regional solidarity and burden-sharing in this regard, and agreed with Ms. Bailliet on the need for effective procedural rights for refugees.

The representative of the European Union expressed agreement with Ms. Garlick on the sufficiency of the current legal framework for refugees. She asked the expert to elaborate on its work with parliamentarians, especially with regard to the role of political narratives.

The representative of South Africa stated that South Africa recognized the dignity of migrants and refugees and appreciated the benefits they brought to societies. Through annual consultations with UNHCR, it was working on improving the domestic refugee situation in respect of access to education, health, water and sanitation. While there was still room for improving the societal attitudes and educating the public, the xenophobic waves which had taken place had further spurred the Government to address the situation. She stated that the issues in South Africa were happening elsewhere in the world which suggested a global approach, and in this regard, a binding international law was needed and collective work on a protocol would be beneficial.

Ms. Garlick acknowledged the efforts undertaken by South Africa to deal with the refugee situation the country. She responded also to the query about the role of parliamentarians, explaining that UNHCR shared knowledge, tools and facts to national and regional parliaments and recommended an upcoming new guide to refugee law addressed to parliamentarians. She stated that refugees were referred to in many national contexts as being "illegally present" and she noted that no person could be illegal. She referred to the 1951 Refugee Convention which in article 31, provided for non-penalization for illegal entry and stay, adding that in some cases refugees did not have the access to the means to enter legally.

Ms. Bailliet also commented on the important role of parliamentarians, and also to the need to educate society, noting that many lawyers were unaware that national constitutional protections applied to refugees.

At its 7th meeting on 27 April, the Ad Hoc Committee continued its consideration of agenda item 6 on "Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices", during which Krassimir Kanev, Chairperson of the Bulgarian Helsinki Committee and E. Tendayi Achiume from the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at the African Centre for Migration and Society, University of Witwatersrand, South Africa, presented on this topic.

Mr. Kanev, Chairperson of the Bulgarian Helsinki Committee, gave a presentation entitled "Approaches to combating racial discrimination in Bulgaria". He highlighted the

wide-ranging discrimination faced by Roma and other ethnic minorities in Bulgaria, in the areas of employment, housing, including forced evictions, segregation in education and health care, selective targeting by the criminal justice system, exclusion from political decision-making and public incitement to hatred and violence. He also pointed out the prevalence of Islamophobia including attacks on mosques, negative media coverage of Islam and Muslims in general and public incitement to hatred, discrimination and violence through marches and rallies in front of mosques. Migrants in particular were also subjected to public incitement to hatred, discrimination and violence, including through a number of demonstrations against migrants, physical violence through "migrant hunters" and refusals to register and expulsion of migrants from different towns in the country.

Mr. Kanev also provided several examples of incitement to hatred against migrants and hate speech in the media as well as statements made by political party activists. Despite such prevalence, there had been no prosecution even in the most flagrant of cases, owing to racist bias among the police and the prosecution, as well as political influences and corruption. He added that the Protection against Discrimination Commission (PADC), heard complaints by victims and there were some successful proceedings against private individuals, businesses and media, but it had a mixed record when the perpetrators were politicians. Mr. Kanev also provided examples of a number of cases of discrimination that were brought before the European Court, and had ruled in favour of victims of discrimination. He therefore recommended that collective litigation by NGOs on behalf or in support of victims, collective complaints before international bodies had a better chance of addressing human rights violations and discrimination faced by migrants and ethnic minorities in Bulgaria. He further recommended the establishment of a system of specialized independent adjudicative and preventive mechanisms at the domestic level.

Ms. Tendayi Achiume gave a presentation entitled "Structural Xenophobic Discrimination against Refugees." She pointed out that refugees and involuntary migrants share the same chaotic, dangerous migratory routes and that many perpetrators of xenophobic discrimination and violence do not distinguish between refugees and other migrants. She then provided a review of demographics of refugees, emphasizing that displacement was rooted in structures or conflicts involving foreign sovereigns, including foreign military intervention. She added that the exclusion of refugees or discrimination against refugees is overwhelmingly exclusion or discrimination along racialized lines. Ms. Achiume then provided a number of different scenarios in which refugees faced structural xenophobic discrimination with a disproportionate and harmful impact of laws, policies, and practices, on refugees on account of their status as foreigners, even in the absence of explicit anti-foreigner prejudice. She took the example of a banking policy that prohibits refugees and asylum seekers from opening bank accounts as a measure for protecting against untraceable money laundering, and described the multifarious implications of such a policy to refugees. She outlined limitations faced by refugees and asylum seekers in the employment and housing sectors, as well as in access to social services, leading to overall structural inequality.

Ms. Achiume delved into the point that on one hand, the "purpose or effect clause" of Article 1 of ICERD clearly requires the regulation of policies whose effect is to nullify or impair the equal exercise of human rights on account of differentiation on account of race, colour, descent or national or ethnic origin. On the other hand, criminalization of acts of a xenophobic or racist nature would almost certainly not include this type of approach because criminal convictions typically require intent, at least in common law jurisdictions. She thus reiterated that Article 1 of ICERD remained ambiguous about the extent and scope of its prohibition of xenophobic discrimination. She concluded that while the CERD's General Recommendation 30 was important because it stated that differential treatment based on citizenship or immigration status constitutes discrimination, Ms. Achiume argued whether ICERD member states uniformly defer to CERD's interpretive guidance, and whether the General Recommendation 30 is viewed as authoritative enough, giving each state to engage in its own legitimacy/ proportionality analysis. She argued that this had implications for determining the global baseline for when structural exclusion of refugees that violates their human rights is prohibited xenophobic discrimination. This may merit some clarity by a possible international guidance or baseline.

During the interactive discussions, the representative of the Bolivarian Republic of Venezuela asked Ms. Achiume about policies, practices and laws which would allow access to health care and education for refugees and asylum seekers who would otherwise not be able to access such services due to the lack of documents or knowledge about the processes. The representative of the European Union sought clarification from Mr. Kanev on the efficacy of criminal procedures and asked Ms. Achiume for her views as to how the new mandate of the Committee could contribute to clarifying tensions between Articles 1.1 and 1.2 of ICERD and how could the idea of additional protocol overcome those challenges. The representative of Pakistan behalf of OIC, asked for more information from the panellists on the issue of criminalisation of xenophobia and on the proportionality issue stipulated in the ICERD General Recommendation 30. The representative of Pakistan also highlighted the comments of the Secretary General of OIC that Islamophobia is a contemporary manifestation of racism and combating Islamophobia as well as vilification of all religions and denigration of symbols and personalities sacred to all religions is a matter of priority.

In response, Mr. Kanev pointed out that criminalization has not worked in Bulgaria, given the few prosecutions, except in cases when private individuals are involved in severe forms of racial discrimination when there may be criminal prosecution. Ms. Achiume emphasized on the importance of temporary documents, along with education and awareness-raising about the legitimacy of such documents among all stakeholders to facilitate access to services by refugees and asylum seekers. She also suggested a comprehensive approach including through the framework of national action plans to better understand how the barriers operate and how to address them. She added that on the issue of criminalisation, a comprehensive approach was necessary whereby criminalisation should not be the final destination. Aside from punitive measures, Ms. Achiume said while criminalisation is important, that the expressive function of criminal law is also important, as there would not be a dramatic shift in the circumstances of an average refugee, migrant or an asylum seeker by merely through a criminal prohibition of a xenophobic act. On the tension between Article 1(1) and 1(2), Ms. Achiume said that there needed to be further clarity to tackle the constraints in ICERD as legitimacy and proportionality are left to the discretion of states meaning wide discretion where citizenship-based discrimination is at play, even where citizenship-based discrimination results in the human rights violations against non-nationals. The problem lies in the lack of clarity as to what extent non-citizens are entitled to equal enjoyment of human rights and ICERD does not do enough to clarify this, and therefore the need for a standard at the global level, clarifying that citizenship discrimination that results in human rights violations is not explicit to states.

Annex II

Programme of Work — 9th Ad Hoc Committee on the Elaboration of Complementary Standards (as adopted 24.04.2017)

	1st week				
	Monday 24.04	*Tuesday 25.04*	*Wednesday 26.04*	*Thursday 27.04*	*Friday 28.04*
10:00–13:00	Item 1 Opening of the Session Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work — General statements	Item 4 continued Comprehensive anti-discrimination legislation	Item 5 continued Protection of migrants against racist, discriminatory and xenophobic practices Peggy Hicks, Director, Thematic Engagement, Special Procedures and Right to Development Division, Office of the High Commissioner for Human Rights; Kristina Touzenis, International Organization for Migration, Geneva	Item 6 continued Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices Krassimir Kanev, Chairperson, Bulgarian Helsinki Committee; E. Tendayi Achiume, Assistant Professor of Law, University of California — Los Angeles School of Law	Item 8 General discussion and exchange of views on items 5 and 6
15:00–18:00	Item 4 Comprehensive anti-discrimination legislation	Item 5 Protection of migrants against racist, discriminatory and xenophobic practices E. Tendayi Achiume, Assistant Professor of Law, University of California — Los Angeles School of Law;	Item 6 Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices Cecilia Bailliet, Professor & Director of the Masters Programme in Public International Law, University of Norway;	Item 7 General discussion and exchange of views on item 4	Item 9 Update discussion on Xenophobia

Ibrahima Kane, Open Society Initiative for Eastern Africa	Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of International Protection, United Nations High Commissioner for Refugees

2nd week

	Monday 1.05	*Tuesday 2.05*	*Wednesday 3.05*	*Thursday 4.05*	*Friday 5.05*
10:00–13:00	Item 10	Item 12	Item 14	Item 15	
	Update discussion on Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination	General discussion and exchange of views on items 9 and 10	Discussion on General Assembly resolution 71/181	General discussion and exchange of views	Conclusions and Recommendations
	—			—	—
	Update discussion on National Mechanisms			Conclusions and Recommendations	General discussion and exchange of views
15:00–18:00	Item 11	Item 13	Item		Item 16
	Update discussion on racism in sport	General discussion and exchange of views on item 11		Compilation of the Report	Adoption of the report of the ninth session

Annex III

List of attendance

Member States

Algeria, Azerbaijan, Bangladesh, Belgium, Bolivia (Plurinational State of), Brazil, Burundi, Canada, China, Colombia, Congo, Cote d'Ivoire, Cuba, Czechia, Djibouti, Egypt, Estonia, Greece, Guatemala, Haiti, India, Italy, Japan, Jamaica, Jordan, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Malta, Mexico, Morocco, Nigeria, Pakistan, Qatar, Russian Federation, Singapore, Slovakia, South Africa, Spain, Sudan, Switzerland, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Zambia, Zimbabwe.

Non-Member States represented by observers

Holy See.

Intergovernmental Organizations

African Union, Organization of Islamic Cooperation, European Union.

Non-governmental organizations in consultative status with the Economic and Social Council

African Commission of Health and Human Rights Promoters, Indian Council of South America and the Indigenous Peoples and Nations Coalition, International Youth and Student Movement for the United Nations (ISMUN).

Non-governmental organizations not in consultative status with the Economic and Social Council

Culture of Afro-Indigenous Solidarity, World against Racism Network (WARN).